

ATTACHMENT 2

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
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**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

DANIEL VILLEGAS,

v.

CITY OF EL PASO, et al.

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Cause No. EP-15-cv-00386-DCG

**DEFENDANT CITY OF EL PASO'S RESPONSE TO PLAINTIFF'S
PROPOSED UNDISPUTED FACTS**

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
1. John Scagno was a policymaker for the City as Chief from February 1987 to May 1994. DSUF ¶¶ 24, 26 (City admission)	Undisputed	
2. Other Chiefs of Police were policymakers for the City prior to and after Scagno's tenure as Chief DSUF ¶ 24 (defining Chief of Police as Policymakers)	Undisputed	
3. Assistant Chief Messer was also a policymaker for the City from December 1976 to May 1994, which included periods when he acted as the Chief's surrogate and exercised delegated authority over Internal Affairs and a term as interim chief. DSUF ¶¶ 36-39 (describing Messer's authority over Internal Affairs during these	Undisputed	

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time periods. Ex. 10, Deposition of Joseph Messer at 14:18–15:3; 17:11–19 (Messer was Scagno’s surrogate); 30:16–31:8 (Messer created policy with the concurrence of the Chief); 224:2–10 (internal affairs “was delegated” to Messer).		
4. The City recognized that the whole reason for different juvenile policies is that juveniles may be more vulnerable than adults. Ex. 2, Moton Dep at 184:25–185:6.	Undisputed	
5. The City cannot say that any particular trainings session was provided to all of the detectives in CAP Ex. 2, Moton Dep at 111:9–12	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
6. Defendant Marquez was not trained on EPPD's juvenile policies or juvenile rights from 1988-1995 Ex. 25, Marquez Training at 4-5 (showing no training on those topics from 1988 - 1995). Ex. 30, Marquez Dep at 54:3–10	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
7. Defendant Arbogast was not trained on EPPD's juvenile policies or juvenile rights from 1989 – 1995 Ex. 26, Arbogast Training at 8–9 (showing no training on those topics from 1989 - 1995). Ex. 22, Earl Arbogast Dep at 103:19–22, 108:9–109:15	Disputed. All officers at EPPD receive some training on how to work with juveniles. In Arbogast’s deposition the excerpts in Plaintiff’s exhibit does not discuss nor say Arbogast was not trained on EPPD’s juvenile policies or rights. The discussion was interrogating juveniles	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.

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8. Defendant Graves not trained on EPPD's juvenile policies or juvenile rights from 1988 – 1995 Ex. 27, Graves Training at 8-10 (showing no training on those topics from 1988 - 1995). Ex. 31, Graves Dep at 76:11–14	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
9. The only trainings provided to CAP detectives in 1993 were discretionary state-mandated trainings on use-of-force and firearms; city-mandated trainings on sexual harassment and El Paso policies; and external trainings which would not have included City of El Paso policies. Ex. 2, Moton Dep at 40:13–40:22; 46:9–48:5.	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
10. EPPD's policy was that parental consent or parental presence was required before juvenile confessions could be taken. Ex. 10, Messer Dep at 109:23–110:1	Undisputed	
11. EPPD's policy was that parents also needed to be notified before juvenile witness statements or confessions could be taken, and that such permission must be documented Ex. 10, Messer Dep at 109:23–110:1 Ex. 22, Earl Arbogast Dep at 258:7–258:13 (important to document parental permission for juvenile questioning)	Undisputed	

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12. Detective Marquez believed he had no responsibility to contact parents after arresting a juvenile. Ex. 30, Marquez Dep at 263:1–7	Disputed. This page and number is not part of Exhibit 30	
13. Defendant Scott Graves was not aware of any policy requiring parental permission before taking juvenile statements. Ex. 27, Graves Dep at 36:25–37:8.	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
14. Det. Arbogast believed no parental permission was necessary to interrogate a juvenile suspect. Ex. 22, Earl Arbogast Dep at 102:6–17 Ex. 34, Earl Arbogast Errata (changing 102:9 from “no” to “yes” and adding “I can question a juvenile suspect taken into custody.”).	Disputed. Arbogast stated that sometimes you had a parent’s permission to interrogate a juvenile, and if there wasn’t a parent nearby you would try to contact that parent as it was important to document to permission from the parents.	Plaintiff’s Ex. 22, 102:10-20
15. Det. Arbogast believed juveniles had no right to have a parent present when questioned—he believed the only requirement was notification. Ex. 22, Earl Arbogast Dep at 101:19–25.	Disputed. Arbogast stated that sometimes you had a parent’s permission to interrogate a juvenile, and if there wasn’t a parent nearby you would try to contact that parent as it was important to document to permission from the parents.	Plaintiff’s Ex. 22, 102:10-20
16. Defendant Carlos Ortega – who was specifically trained as a juvenile officer - believed that juveniles could be interviewed with permission of a Juvenile Probation Defendant officer, even without parental permission, and even though	Undisputed.	

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he could not recall seeing such a policy. Ex. 32, Ortega Dep at 83:20–84:20.		
17. James Arbogast – who was involved in a disciplinary action involving widespread juvenile policy violations, CP 93-009 – did not believe parental permission was required to take juvenile confessions. Ex. 33, James Arbogast Dep at 30:17–24.	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
18. In the Lazo-England murder investigation, Defendants Marquez and Ortega interrogated juveniles Michael Johnston and Jacob Jauregui without parental permission. Ex. 6, Allio Report at 20–21, 48.	Disputed. They interviewed them.	Attachment 2-A, Marquez Depo, 106:22-107:2
19. In the Lazo-England murder investigation, Defendants picked up and took a statement from Rodney Williams, a juvenile, without parental notice or permission Ex. 6, Allio Report at 48. Ex. 22, Arbogast Dep at 204:12–206:16. Ex. 80, 06.23.2011, Williams testimony at 14:19–15:7.	Disputed. In Plaintiff’s Exhibit 22 there is no pages 204-206	
20. In the Lazo-England murder investigation, Defendants interrogated Plaintiff, a juvenile, regarding a murder without parental permission. Ex. 6, Allio Report at 49 (noting, after reviewing the file, that no parental	Disputed. Graves is being questioned about whether permission was sought to interrogate Plaintiff and Graves responded that he does not “recall”.	Plaintiff’s Ex. 31, 153:1–12.

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permission was documented from Daniel's parents to interrogate him). Ex. 31, Graves Dep at 153:1–12.		
21. Defendant Ortega received no training on interview techniques appropriate for use with juveniles to avoid coercion or undue pressure Ex. 28, Ortega Training at 4-6. Ex. 32, Ortega Dep at 90:19–91:5.	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
22. The City's policy required juvenile interrogations to be conducted by juvenile officers ("youth services" officers) in most circumstances. Ex. 2, Moton Dep at 184:7–24, 185:7–14.	Disputed. In Moton's deposition it states "when possible" interrogation of a juvenile suspect is conducted by youth services.	Plaintiff's Exhibit 2, 184:10-12
23. The City's policy required juvenile officers to remain with juveniles for the entirety of juvenile interrogations. Ex. 2, Moton Dep at 185:15–18.	Undisputed	
24. Detective Marquez ignored the policy of having youth services interrogate a suspect "because I'm the one that's investigating the crime." Despite ignoring that policy throughout his career, he was never investigated or disciplined for that failure. Ex. 30, Marquez Dep at 69:1–16. Ex. 11, Marquez Personnel	Disputed.	Attachment 2-A, Marquez Depo, 70:4-10

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file. Ex. 12, Marquez IA Card.		
25. Defendant Arbogast was not aware of a single case where youth services officers interrogated juvenile suspects, even though that was EPPD policy. Ex. 22, Earl Arbogast Dep at 108:19–109:15.	Undisputed.	
26. Defendant Graves admitted he usually interrogated juvenile suspects himself and did not mention a single case where he turned over the interrogation to a juvenile officer. Ex. 31, Graves Dep at 31:22–32:7.	Undisputed.	
27. Defendant Ortega - a juvenile officer at the time of Plaintiff's arrest - was never trained to consider the intelligence, mental health conditions, or mental disabilities of a juvenile. Ex. 32, Ortega Dep at 91:24–92:4.	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
28. Defendants Marquez and Graves weren't trained that juveniles were more susceptible to coercion than adults – even though that fact was well known by 1993. Ex. 30, Marquez Dep at 54:3–10. Ex. 31, Graves Dep at 76:11–14. Ex. 6, Allio Report at 48.	Disputed. All officers at EPPD receive some training on how to work with juveniles.	Ortega Depo 82:1-6; 82:17-21; 91:6-15; 101:8-10; 107:11-16.
29. Defendant Arbogast believed it was not necessary to use different techniques	Undisputed	

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with juveniles than you would with adults. Ex. 22, Earl Arbogast Dep at 103:15–22.		
30. In the internal affairs complaint IA 88-041, on March 4, 1988 EPPD officers detained a 13-year-old boy in a movie theater to question him about a criminal mischief complaint. Ex. 35, IA 88-41, at 68517–68518.	Disputed. Did not happen at a movie theater, but in the mall bathrooms and there was no custodial interrogation.	See City’s Reply Proposed Undisputed Facts paragraphs 4-5
31. In IA 88-041, three officers questioned a thirteen-year-old boy in a closed office, swearing at him and assaulting him. Despite questioning the boy and attempting to obtain a confession through threats and force, the officers never read the boy his rights or took him to a magistrate judge for reading of Miranda rights. Ex. 35 at CITY 68555–56.	Disputed. The investigation found that these allegations were unfounded.	See City’s Reply Proposed Undisputed Facts paragraphs 32-33
32. EPPD’s policy was for suspects to sign Miranda cards when they are read their Miranda rights. Ex. 35 at CITY 68555–56.	Undisputed.	
33. In IA 88-041, there is no evidence that the officers ever completed a Miranda card or other paperwork regarding reading the detained suspect juvenile his Miranda rights, even though that was EPPD's policy. Ex. 35	Disputed. This is Plaintiff’s counsel commentary on a complaint file. It is not an undisputed fact.	City’s Reply Ex. C
34. The officers in complaint IA 88-041 were never disciplined for their many juvenile policy violations,	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a	City’s Reply Proposed Undisputed Facts paragraphs 7, 9, 13, 29

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<p>including interrogation of a juvenile by a non-juvenile officer, failure to transport to a juvenile facility, failure to contact Youth Services, failure to get parental permission before interrogation, and failure to sign Miranda card before questioning. Ex. 35 Ex. 4, Rosenthal Report at 19 n. 15, 232.</p>	<p>subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p> <p>There was no custodial interrogation and the matter was investigated finding no policy violations. He was transported to the local police station and turned over to a juvenile officer who turned him over to his parents</p>	
<p>35. The City did not even investigate the officers in IA 88-041 for juvenile policy violations, which were apparent from the face of the complaint. Ex. 35 at CITY 68530-68531. Ex. 4, Rosenthal Report at 19 n. 15, 232.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p> <p>There was no juvenile policy violation reported and there was no finding of a policy violation.</p>	<p>City’s Reply Ex. C at DEF CITY 70344-70352</p>

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<p>36. No discipline was administered in IA 88-041. Ex. 35 Ex. 4, Rosenthal Report at 19 n. 15, 232.</p>	<p>Undisputed, with the clarification that no policy violations or improper conduct were sustained to warrant discipline.</p> <p>As to any conclusions drawn from the lack of a need for discipline, disputed.</p> <p>As to Rosenthal opinions on this is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>37. In complaint IA 89-015, on January 30, 1989, EPPD officers arrested a 14-year-old without probable cause for a fireworks violation. Ex. 36, IA 89-015 at CITY 70344 - 70352. Ex. 4, Rosenthal Report at 234.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to</p>	<p>City’s Reply Ex. C at DEF CITY 70344-70352</p>

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	Exclude. Further disputed opinions exist in the City's expert report.	
38. The City did not even investigate the officers in IA 89-015 for juvenile policy violations, including failing to call a juvenile officer to question the boy, failing to get parental permission, and questioning the boy about a crime without advising him of his constitutional rights or taking him to a magistrate judge for reading of Miranda rights, which were apparent from the face of the complaint. Ex. 36 at CITY 70352. Ex. 4, Rosenthal Report at 19 n.15, 233–235.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report. Juvenile's parent brought him home and was present while the officers and the fire personnel were asking about the explosion	City's Reply Ex. C at DEF CITY 70344-70352
39. In IA 89-015, the officers questioned a boy in his backyard and then tackled and arrested him when he tried to run, even though they lacked evidence of his involvement in any crime, as noted by a youth officer Ex. 36 at CITY 70369-70.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report. They had eyewitnesses who heard the explosion and saw him go	City's Reply Ex. C at DEF CITY 70344-70352

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	to look at the explosion and then flee to the mall. There was ample probable cause	
40. In IA 89-015, officers detained a boy for questioning but never read him his rights and no Miranda card or other paperwork was completed. Ex. 36 at CITY 70369 and throughout.	Disputed. There was no custodial interrogation.	City's Reply Ex. C at DEF CITY 70344-70352
41. No discipline was administered in IA 89-015. Ex. 4 at 234. Ex. 36 at CITY 70341.	Undisputed, with the clarification that no policy violations or improper conduct were sustained to warrant discipline.	City's Reply Ex. C at DEF CITY 70344-70352
42. In IA 90-183, on October 24, 1990, James Arbogast (Defendant Earl Arbogast's brother) arrested a crowd of seventeen high school students, including many juveniles, for jeering at and insulting officers making an arrest. Ex. 37, IA 90-183 at CITY 72910, 72937-38. Ex. 4, Rosenthal Report at 241.	Disputed. Arrest of one of the juveniles was on a warrant, the rest for disorderly conduct	City's Reply Ex. D at DEF CITY 72932-72936
43. In IA 90-183, Officer Arbogast threatened to "beat the shit" out of the teenagers, and the EPPD described the arrest as "unnecessary." Ex. 37 at CITY 72912, 72953-55.	Disputed	City's Reply Ex. D at DEF CITY 72932-72936
44. In IA 90-183, the City never investigated or made a decision on juveniles' complaints that they were falsely arrested and threatened by an EPPD officer. No investigation was made and no discipline	Disputed. The City disputes this "undisputed fact" to the extent it constitutes opinion that the City's investigation or actions were improper and not sufficient.	City's Reply Ex. D at DEF CITY 72932-72936

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issued for dishonesty by the arresting officer despite evidence that he falsely arrested juveniles en masse, and even though it was plain from the face of the investigative file that many innocent parties, including juveniles, were arrested without cause. Ex. 37 at CITY 72946. Ex. 4 at 244.		
45. The City's disciplinary decision in IA 90-183 referenced only the subject officer's use of profanity and tactical mistakes, but did not address the more severe complaints of threats, false arrest, and violation of civil rights. The City gave a two-day suspension to offending officer James Arbogast for swearing and tactical mistakes only. Ex. 37 at CITY 72912–72913, 72987-72992.	Disputed. The City disputes this “undisputed fact” to the extent it constitutes opinion that the City’s investigation or actions were improper and not sufficient.	City’s Reply Ex. D at DEF CITY 72932-72936
46. In IA 91-029, on February 16, 1991, EPPD officers arrested a 16-year-old and threw him on the floor and handcuffed him. An officer grabbed the teenager’s face, questioned him, and threatened to hit him if he didn’t cooperate. Ex. 38, IA 91-029 at CITY 79332-79333.	Disputed Allegations were determined to be unfounded	City’s Reply Ex. E at DEF CITY 73233; 73233-73235
47. In IA 91-029, officers threatened to "make things ruff [sic]" for the teenager if he did not cooperate and also threatened to harm his uncle, thereby interrogating him before taking him to a	Disputed	City’s Reply Ex. E at DEF CITY 73233; 73233-73235

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magistrate judge for reading of Miranda rights. Ex. 38 at CITY 79333.		
48. In IA 91-029, an officer threatened the complainant juvenile that he needed to sign confession papers confessing to burglary in front of a judge and not to mention anything about being forced to sign them. Ex. 38 at CITY 79333.	Disputed	City's Reply Ex. E at DEF CITY 73233; 73233-73235
49. In IA 91-029, officers drove the complainant teenager to various houses to obtain additional false confessions from him and fed him information to validate the false confession. Ex. 38 at CITY 79334.	Disputed	City's Reply Ex. E at DEF CITY 73233; 73233-73235
50. No discipline was administered in IA 91-029 despite numerous juvenile policy violations, including failure to get parental consent or involve juvenile officers. The City also failed to investigate or name as a disciplinary issue whether an officer had instructed the complainant juvenile to lie to a magistrate judge and threatened him if he failed to lie to cover up the officers' misconduct. Ex. 39, IA 91-029 pt 2, at CITY 79314, 79323. Ex. 4, Rosenthal Report at 247, 249.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report. IA Report shows that this matter was investigated	City's Reply Ex. E at DEF CITY 73233; 73233-73235

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51. The City did not even investigate the officers in IA 91-029 for juvenile policy violations, including failing to get parental consent to take a statement or confession from a juvenile and failing to involve juvenile officers in a juvenile's questioning and confession, despite obvious juvenile policy violations apparent on the face of the complaint. Ex. 39 at CITY 79314. Ex. 4, Rosenthal Report at 249.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report. IA report shows that this matter was investigated	
52. On September 24, 1991, Defendant Alfonso Marquez and other police officers arrested 17-year-old Steven Alvarado for murder. Ex. 40, Alvarado v. State, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995).	Undisputed	City’s Reply Ex. F at DEF CITY 84101-84120
53. Alvarado testified that the officers coerced his confession by cursing at him, striking him in the face with a boot, refusing his requests for a lawyer, and promising leniency if he confessed Ex. 40, Alvarado v. State, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995).	Disputed, Plaintiff has not provided any evidence of Alvarado’s testimony.	City’s Reply Ex. F at DEF CITY 84101-84120
54. The City never opened an internal affairs investigation into Alvarado’s complaint or took any action to investigate it. Ex. 41, Letter of May 23, 2022 (City agreeing to produce all IA files in	Disputed. Defendant disputes Plaintiff’s commentary and conclusions regarding investigations based on document production as “undisputed fact” regarding	City’s Reply Ex. F at DEF CITY 84101-84120

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categories including coerced statements and confessions, excessive force during interview/interrogation, false arrest, and custodial interrogation from 1988 to 1993 time period. The City produced no complaint relating to Alvarado's allegations). Ex. 42, City's 4th Response to Pl's First RFPs, at 15–17 (agreeing to produce documents responsive to instances in Plaintiff's complaint, including Alvarado's investigations, but producing no documents reflecting an IA investigation into Alvarado's allegations).	whether something occurred. Moreover, there was no reason to open an IA file when there was a judicial finding that the confession was voluntary and not coerced	
55. In IA 92-019, On January 30, 1992, an off-duty EPPD officer arrested a 15-year-old and accused the teenager of groping his girlfriend on an earlier date. Ex. 43, IA 92-019, at CITY 69528-59.	Disputed. No arrest was made. No Exhibit 43 was filed with Plaintiff's Response.	City's Reply Ex. G at DEF CITY 69520-69551
56. In IA 92-019, the subject officer asked the boy about the assault and, after the boy denied knowledge, the officer slapped him in the face and detained him. These questions were asked without taking the boy to a magistrate judge for reading of Miranda rights - a policy violation plain from the face of the complaint. Ex. 43 at CITY 69528.	Disputed. Defendant disputes Plaintiff's commentary and opinions regarding "policy violations" based on the complaint file itself. These are opinions, not undisputed facts.	City's Reply Ex. G at DEF CITY 69520-69551
57. In IA 92-019, a second officer questioned the boy further about the alleged crime in a patrol car without	Disputed. Defendant disputes Plaintiff's commentary and opinions regarding "policy	City's Reply Ex. G at DEF CITY 69520-69551

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calling a juvenile officer or getting parental consent in violation of the City's policies. These questions were also asked without taking the boy to a magistrate judge for reading of Miranda rights. The City never investigated or initiated discipline based on those policy violations; the only investigation initiated was for excessive force. The policy violations were plain from the face of the complaint. Ex. 43 at CITY 69523, 69528.	violations" based on the complaint file itself. These are opinions, not undisputed facts.	
58. In IA 92-019 the City found that the subject officer had slapped a child for no reason—and had improperly failed to identify himself as a police officer lied about identifying himself as a police officer—but only administered a written reprimand as a punishment. Ex. 4 at 270-271.	Disputed. Defendant disputes Plaintiff's commentary and opinions regarding "policy violations" based on the complaint file itself. These are opinions, not undisputed facts.	City's Reply Ex. G at DEF CITY 69520-69551
59. In IA 92-019, the City failed to investigate the subject officer for dishonesty or punish him for dishonesty despite evidence that he lied. Ex. 4 at 19 n.16, 271	Disputed. Defendant disputes Plaintiff's commentary and opinions regarding "policy violations" based on the complaint file itself. These are opinions, not undisputed facts.	City's Reply Ex. G at DEF CITY 69520-69551
60. On May 13, 1994, EPPD officers arrested 17-year-old Augustin Fabio Carreon for murder. Ex. 44, Carreon Affidavit at 2.	Undisputed.	

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61. Detectives coerced Carreon into signing a false confession and misidentifying another person as the murderer, telling Carreon that he would be released if he incriminated the officers' desired suspect. When Carreon refused, the detective angrily and repeatedly insisted that Carreon identify that suspect. Ex. 44 at 2.	Disputed, there is a judicial determination that the confession was voluntary and not coerced.	Trial court denied MTS confessions/statements, tangible evidence, and identification. [81728] He was acquitted by the jury of murder and convicted him on misdemeanor assault and sentenced to 2 years probation). City's Reply Ex. H at DEF CITY 81721-81842
62. The City received additional notice of detective misconduct against Carreon later in 1994, when Carreon testified that an EPPD detective coerced him to make a false identification. Ex. 45, Carreon testimony at 6-8.	Disputed, there is a judicial determination that the confession was voluntary not coerced	City's Reply Ex. H at DEF CITY 81721-81842
63. The City never opened an internal affairs investigation into Alvarado's complaint or took any action to investigate it. Ex. 42, City's 4th Response to Pl's First RFPs, at 15-17 (agreeing to produce documents responsive to instances in Plaintiff's complaint, including Carreon's complaint, but producing no documents reflecting an IA investigation into Carreon's allegations).	Disputed. Defendant disputes Plaintiff's commentary and conclusions regarding investigations based on document production as "undisputed fact" regarding whether something occurred. Further the City disputes Plaintiff's commentary and opinions on the appropriateness or necessity of investigations. This is opinion, not undisputed fact.	City's Reply Ex. H at DEF CITY 81721-81842
64. In IA 90-183, in an arbitration regarding an incident where an officer threatened to "beat the shit" out of a group of seventeen teenagers and arrested them without any basis, the City admitted that its policy was	Disputed, the arrests were not without any basis.	City's Reply Ex. D

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>“to get tough with the hoods and thugs.” Ex. 37, IA 90-183, at CITY 72912, 72953-55, 72983.</p>		
<p>65. In IA 92-174, on November 13, 1992, members of all three units of the EPPD "Tac Squad" arrested six juveniles and took them to the TAC office, in violation of EPPD policy resulting in an internal affairs complaint. Ex. 23, IA 92-174 at CITY 69776.</p>	<p>Disputed that everyone from all three units were involved, undisputed that juveniles were taken to the IAC office in violation of policy</p>	<p>City's Reply Ex. I</p>
<p>66. In IA 92-174, the City never investigated Gabriel Lujan's allegation that officers forced him to sign a statement in the course of abusing him; the disciplinary file was limited to physical and verbal abuse and other violations, but did not add an allegation regarding Lujan's right not to have a statement coerced from him, despite his allegation to that effect. Ex. 23, IA 92-174, at City 69776-78 (no investigation for coerced statement), City 69782 (Lujan's allegation of coerced statement).</p>	<p>Disputed that there was any coerced statement</p>	<p>City's Reply Ex. I</p>
<p>67. In IA 92-174, the City never investigated juvenile Isaac Licon's allegation that officers coerced him into signing a false witness statement using force and threats. Ex. 23, IA 92-174, at City 69776-78 (no investigation for coerced statement), City</p>	<p>Disputed that there was any coerced statement</p>	<p>City's Reply Ex. I</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
69782 (Licon's allegation of coerced statement).		
68. The City suspended multiple officers for their misconduct in IA 92-174, but did not consider false statements by the officers, did not make findings regarding or issue discipline for coercion of statements from juveniles, and ignored juvenile policy violations against four involved officers. Ex. 4, Rosenthal Report at 19 n. 16, 275.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report. Disputed that there were any coerced statements.	City’s Reply Ex. I
69. In IA 92-174, Sergeant Gregory Allen admitted to calling Gabriel Lujan a “goddamn liar” and slapping him across the face, grabbing him by the neck, and pinning him to the wall during questioning. Lujan was then diagnosed with two ruptured ear drums. He was suspended for excessive force in IA 92-174, but despite evidence that he lied during the investigation, committed numerous juvenile policy violations, and used force to coerce a confession/statement from a juvenile, no finding, or discipline arose from any of those acts. Even though he abused a teenager badly	Undisputed that Sgt. Allen used force against Lujan and that Lujan was injured, but disputed at the circumstances of the use of force. Disputed that there was evidence of Sgt Allen lying or that he used force to coerce a confession. These are merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert	City’s Reply Ex. I

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>enough to rupture both his eardrums, Allen was not demoted.</p> <p>Ex. 23, IA 92-174, at CITY 69776-78 (no investigation for coerced statement, ruptured eardrums), 69782 (Lujan's allegation of coerced statement), 69795 (admission of misconduct).</p> <p>Ex. 4, Rosenthal Report at 19 n. 16, 274–75.</p>	<p>and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p>	
<p>70. By 1992, the TAC Squad consisted of 3 squads of 10 officers each.</p> <p>Ex. 70, Brown Dep at 17:6–20.</p>	<p>Disputed. In his deposition Brown states that the TAC Squad consisted of ten officer and one sergeant.</p>	<p>Ex. 70, Brown Dep at 17:19–20.</p>
<p>71. The allegations in IA 92-174 included that officers and supervisors within the TAC squad had beaten children, coerced their confessions and witness statements, questioned them without parental permission, transported them in violation of juvenile policies, threatened to kill them, and threatened to harm them if they reported the misconduct.</p> <p>Ex. 23 at CITY 69776–69778, 69781–69784.</p>	<p>Disputed, there were no allegations involving coercion of confessions or witness statements.</p> <p>Undisputed that juveniles were improperly transported to the TAC offices</p>	<p>City's Reply Ex. I</p>
<p>72. In IA 92-174, multiple officers expressed that they believed it acceptable to take juveniles to the TAC office for questioning; for example, Officer Duffy said he drove to the TAC office because he believed it was permissible and that he believed it was okay to take juveniles to the TAC office because</p>	<p>Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987).</p>	<p>City's Reply Ex. I</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>“everyone was going that way.” These, and other facially apparent juvenile policy violations, were never disciplined. Ex. 4, Rosenthal Report at 19 n. 15, 275. Ex. 23 at CITY 69797.</p>	<p>Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>73. EPPD policy required officers to take arrested juveniles directly to an authorized juvenile location ("juvenile processing office") without delay; did not allow officers to take juveniles to other locations after their arrest; and required that juveniles be taken to a magistrate judge for a warning of constitutional rights before being interrogated Ex. 2, Moton Dep at 158:12–21. Ex. 8, Scagno Dep at 41:18–42:9 (arrested juveniles had to go to a magistrate "if you were going to talk to them"). Ex. 46, 1992 Procedures Manual at CITY 21502–04.</p>	<p>Undisputed</p>	
<p>74. The TAC Squad worked frequently with juveniles Ex. 33, James Arbogast Dep at 26:23–25.</p>	<p>Undisputed</p>	
<p>75. Instead of responding to the systemic misconduct identified in IA 92-174 and CP 93-009 with broader investigations or department-wide responses, the City ignored the systemic misconduct. Ex. 4, Rosenthal Report at 18–20.</p>	<p>Disputed that there was systemic misconduct. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v.</i></p>	<p>City’s Reply Exs. I and J</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	<p><i>Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p> <p>Disputed that the City failed to respond to misconduct whenever reported.</p>	
<p>76. Other than CP 93-009, the record contains no evidence of follow-up by the City to the mass juvenile policy violations identified in IA 92-009.</p> <p>Ex. 4, Rosenthal Report at 18–20.</p> <p>Ex. 10, Messer Dep at 268:3–6 (no EPPD audits because of information obtained by IA from 1989-1993).</p> <p>Ex. 23, IA 92-009.</p> <p>Ex. 24, CP 93-009.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p> <p>Disputed that Plaintiff's Exhibit 23 contains IA92-009.</p>	City's Reply Ex. J
<p>77. IA 92-174 stemmed from the decision of the TAC unit to approach a group of juveniles en masse to "settle the score" with a group of juveniles</p> <p>Ex. 10, Messer Dep at 153:7–154:13.</p>	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
78. The investigation in IA 92-174 was initiated not because any officer reported the excessive force or numerous juvenile policy violations, but instead because the father of one of the children abused by the officers reported the misconduct to the mayor, who then reported the misconduct to Chief Scagno. Ex. 10, Messer Dep at 154:20–155:4.	Disputed, IA92-174 was initiated because of information developed during the investigation of CP93-009.	City’s Reply Exs. I and J
79. No officers involved in IA 92-174 were investigated for failing to report misconduct or for maintaining a code of silence regarding the misconduct they witnessed Ex. 23, IA 92-174 at CITY 69776–69778.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	City’s Reply Exs. I
80. In CP 93-009, only two officers were investigated for misconduct: Sergeant Lowe, a TAC sergeant, and his supervisor Lt. Martinez Ex. 24, CP93-009 at CITY 0064379.	Disputed.	City’s Reply Ex. J

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
81. In CP 93-009, the City did not investigate any other sergeants in the TAC unit or any officers in the TAC unit Ex. 24, CP93-009 at CITY 0064379.	Disputed.	City's Reply Ex. J
82. In CP 93-009 or elsewhere, the City did not investigate whether the other two sergeants in the TAC unit involved in the mass juvenile policy violations in IA 92-174, Sgt Allen and Sgt Johnson, had committed or authorized broader juvenile violations Ex. 23, IA 92-174 at CITY 69779-69781. Ex. 24, CP93-009 at CITY 0064379. Ex. 41, Letter of May 23, 2022 (City agreeing to produce all IA files in categories including coerced statements and confessions, excessive force during interview/interrogation, juvenile violations, false arrest, and custodial interrogation from 1988 to 1993 time period. The City produced no complaint relating to investigations against Allen or Johnson for broader juvenile violations).	Disputed, Defendant disputes Plaintiff's commentary and conclusions regarding investigations based on document production as "undisputed fact" regarding whether something occurred. Further the City disputes Plaintiff's commentary and opinions on the appropriateness or necessity of investigations. This is opinion, not undisputed fact.	City's Reply Exs. I and J
83. In CP 93-009, officers under Sergeant Lowe's command revealed that juvenile policies were regularly violated by the TAC unit, including taking juvenile witness statements at the TAC office.	Undisputed	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 24 at CITY 64380-82.		
<p>84. In CP 93-009, James Arbogast—who previously received a slap on the wrist punishment for his mass arrest of a group of children without probable cause and his threats to “beat the shit” out of them—clarified in a statement that the widespread violations of juvenile policies were not limited to Sgt. Lowe’s unit in the TAC squad, but extended throughout the City. He stated:</p> <p>"[T]here will always be black and white rules set forth only to cover those which sit above us but reality to the officer is good performance and solvability. . . . It has not only been our unit, but reality is other units operate with juveniles which may somewhat bend those rules for juveniles . . . if we never spoke to juveniles without parental consent first our solvability factor would be that much worse."</p> <p>Ex. 24 at CITY 64571-72. PUF ¶¶ 43-45.</p>	<p>Disputed that Arbogast received a slap on the wrist or that he received punishment for the alleged violations. Undisputed that Arbogast expressed his frustration with following the rules. Disputed to the extent that Plaintiff takes this statement as anything more than speculation.</p>	<p>City’s Reply Ex. J at DEF CITY 64536-64538</p>
<p>85. In CP 93-009, the City never asked James Arbogast what other units were violating juvenile policies or what he meant when he said that the purpose of juvenile rules was only “to cover those which sit above us.”</p>	<p>Disputed. Plaintiff’s Exhibit 33, 93:7-12 only discusses if he had heard anything about the interrogation/arrest of Plaintiff</p>	<p>Plaintiffs Ex. 33, James Arbogast Dep at 93:7–12.</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 33, James Arbogast Dep at 93:7–12.		
86. In IA 92-174, Sergeant Lowe commented that he believed his suspension was merely a "justification suspension"-i.e., designed to protect supervisors-which also went unaddressed. These comments were not addressed or investigated by the City. Ex. 23, IA 92-174 at CITY 69808.	Disputed to the extent that it is out of context and reflects his frustration of being severely punished for his actions.	City's Reply Ex. I at DEF CITY 0069808.
87. In CP93-009, an officer reported that Sergeant Lowe had proposed a drug "bust" where he suggested lying about the circumstances of the bust, claiming that they had merely "rolled up" on a drug deal that was in fact a planned operation. According to the reporting officer, Sgt. Lowe shared that scheme with a prosecutor, but the prosecutor disagreed with it because it would be "perjury"; Sgt. Lowe then told the other officers that the prosecutor was "not a team player" and to "be careful of what we said around [the prosecutor]." Ex. 24, CP 93-009 at 64633. Ex. 4, Rosenthal Report at 282.	Undisputed that Officer Avilos reported a proposed "dope deal" that never happened and that Assistant District Attorney Paul Letnich objected due to potential perjury. Disputed that DEF CITY 0064633 says anything about Letnich not being a team player or that anyone had to be careful about what they said around him	City's Reply Ex. I at DEF CITY 0064633

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
88. The officer who reported that Sergeant Lowe had proposed perjury to a prosecutor and then warned officers not to trust the prosecutor when the prosecutor rejected the scheme also reported the Sgt. Lowe had retaliated against him when he reported Lowe for lying. The officer's complaint of retaliation and proposed conspiracy/perjury was not investigated and no discipline was administered against Sgt. Lowe for that officer's complaint. Ex. 24, CP 93-009 at 64633–34. Ex. 4, Rosenthal Report at 282.	Disputed.	City's Reply Ex. I at DEF CITY 0064633-34
89. In CP 93-009, the City ignored evidence of further juvenile systemic misconduct and chose not to investigate that misconduct, despite such misconduct being facially apparent from the complaint and investigative file. Ex. 4, Rosenthal Report at 19-20.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
90. Defendant Graves was unaware of any instance where officers were punished for not following juvenile policies. Ex. 31, Graves Dep at 203:25–204:5.	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
91. The City emphasized clearance rates over Constitutional policing, allowing officers to lie with impunity and without fear of investigation. The City's IA system was designed to absolve command staff of responsibility, not to identify and correct misconduct. The way the system was operated virtually ensured plausible deniability on the part of City command staff and prosecutors. Ex. 21, Rosenthal Rebuttal Report, at 11.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
92. Chief Scagno and other command staff of the El Paso Police Department frequently reviewed disciplinary files but chose not to ask questions or conduct investigations even when faced with compelling evidence of integrity violations and other police misconduct. The need to investigate further was obvious. But in response, EPPD command staff chose to ignore obvious violations. Ex. 21, Rosenthal Rebuttal Report, at 11.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
93. Within the EPPD and within CAP, the City claimed to have no notice of broader problems involving investigating, interviewing, interrogating, and taking confessions from juveniles. Ex. 2, Moton Dep at 217:24–218:2.	Disputed that Witness Moton is authorized to speak for the City. Undisputed that Moton was not aware of any broader problems.	Plaintiff's Ex. 2. 217:14-17
94. The City never conducted any audits from 1989-1993	Undisputed, but the City disputes Plaintiff's	Plaintiff's Ex. 2. 217:14-17

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
based on information obtained by internal affairs. Ex. 10, Messer Dep at 268:3–6.	commentary and opinions on the appropriateness or necessity of investigations. This is opinion, not undisputed fact .	
95. Messer and Scagno admitted it would be easy to tell if an officer failed to get the right permission in working with juveniles. Ex. 10, Messer Dep at 199:10–22. Ex. 8, Scagno Dep at 167:23–168:4.	Undisputed.	
96. Messer and Scagno admitted it would be easy to tell if an officer failed to get the right permission in working with juveniles. Ex. 10, Messer Dep at 199:10–22. Ex. 8, Scagno Dep at 167:23–168:4.	Undisputed.	
97. By 1993, Scagno was aware of the issue with TAC officers transporting juveniles incorrectly. Ex. 8, Scagno Dep at 164:20–25.	Disputed, Chief Scagno testified that his answer is probably yes, but he could not remember.	Plaintiff's Ex. 8. 164:24-25
98. In IA92-174, Scagno admitted that the investigation revealed an issue that officers were taking statements and confessions from juveniles without parental permission. Scagno was aware of the problem. Ex. 8 at 164:20–165:4.	Undisputed that Chief Scagno knew about this isolated incident with TAC, disputed that he had any knowledge of a department wide issue	Plaintiff's Ex. 8. 164:24-25
99. Scagno met regularly—several times a week—with Assistant Chief Messer on disciplinary issues. Ex. 8, Scagno Dep at 54:13–55:16, 145:20–146:3.	Undisputed	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
100. Scagno called the FBI regarding the misconduct described above in CP93-009, which revealed systemic juvenile policy violations in the pursuit of confessions and “solvability.” In response, Chief Scagno, instead of seeking accountability, “warned [the officers] about trying to work with the Feds.” Ex. 24, CP93-009 at 64461, 64556.	Disputed, Chief Scagno called the Special Agent in Charge to see why the FBI was investigating members of the Department’s Gang Task Force. Disputed as to the hearsay allegation regarding Chief Scagno’s statement about warning about working with the feds being out of context.	City’s Reply Ex. I at DEF CITY 0064461, 0064556
101. Scagno was specifically briefed about the allegations in CP93-009, and Scagno acknowledged that the fact that he was briefed on the investigation was an indicator that it was an important case. Ex. 8, Scagno Dep at 160:5–13.	Disputed, Chief Scagno could not remember.	Plaintiff’s Ex. 8. 160:12-13
102. Chief Scagno acknowledged that juvenile policy violations were committed by Sergeant Lowe’s subordinates and people who worked under him—violations which were never investigated or disciplined Ex. 8, Scagno Dep at 161:24–162:5. PUF ¶¶ 68, 75, 82.	Disputed, Command staff determined that this was a supervisory failure. The supervisors were disciplined harshly and the unit was broken up.	City’s Reply Exs. K and L.
103. Scagno took no Department-wide actions in response to the juvenile misconduct involved in IA 92-174 Ex. 8, Scagno Dep at 161:24–162:5. PUF ¶¶ 68, 75, 82.	Undisputed, but the City disputes Plaintiff’s commentary and opinions on the appropriateness or necessity of department wide actions for this isolated incident. This is opinion, not undisputed fact .	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
104. Scagno received direct notice of individual incidents of juvenile misconduct, including signing disciplinary letters, receiving notices of appeal, receiving notices of FBI investigations, and through distributions of complaint files to the Chief's Office Ex. 35 at 68606. Ex. 36 at 70342. Ex. 37 at 72907, 72993, 73022. Ex. 38 at CITY 73222.	Undisputed that Chief Scagno was aware of instances where an investigation determined that there was misconduct	
105. Responsibility for reviewing internal affairs complaints fell to the Chief (Scagno) and was often delegated to Messer Ex. 10, Messer Dep at 194:12–24.	Disputed that there was any legal mandate that the Chief of Police review internal affairs complaints personally and could not delegate to Assistant Chief Messer	Plaintiff's Ex. 10, 194:21-24
106. Messer reviewed several thousand disciplinary files during his tenure. Ex. 10, Messer Dep at 206:1–10.	Undisputed.	
107. Chief Scagno had notice of the juvenile policy violations involved in the juvenile complaints reviewed by Dr. Rosenthal Ex. 6, Allio Report at 50–53. Ex. 21, Rosenthal Rebuttal at 8.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
108. The disciplinary files involving similar misconduct—coercive interrogation and false arrest of juveniles involving threats and physical force—would have provided notice to the EPPD regarding juvenile violations across the police department as a whole as well as specific units including the TAC team and Crimes Against Persons. These shortcomings included both a pattern of individual incidents and systemic violations affecting the entire police department. Ex. 4, Rosenthal Report at 28.	Disputed. Disputed that there were disciplinary files that involved similar misconduct. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
109. It was apparent that “obvious violations” of juvenile policies would continue absent auditing or monitoring of such misconduct. Ex. 4, Rosenthal Report at 28.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
110. Even though complaint CP93-009 made clear that juvenile rights were being violated across the EPPD, Chief Scagno did not consider that, or any other complaint, to constitute misconduct requiring	Disputed that CP93-009 demonstrated that juvenile rights were being violated across the EPPD. Disputed, Moton did not testify as to what Chief	City’s Reply Ex. J and Plaintiff’s Ex. 2, 214:3-219:18

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
departmental action as of 1993. PUF ¶ 84. Ex. 2, Moton Dep at 217:14–218:2; 219:16–18.	Scagno considered or did not consider.	
111. Through its responses to allegations of juvenile misconduct, the City sent a message to officers that juvenile policy violations were not of significant concern. Ex. 4, Rosenthal Report at 28.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
112. The City's failure to discipline, train, or supervise officers regarding juvenile misconduct would be expected to increase the risk of wrongful convictions, as occurred to Plaintiff. Ex. 4, Rosenthal Report at 29.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
113. Detectives Marquez, Arbogast, and failed to video tape or record Daniel Villegas's purported confession, violating EPPD's	Undisputed, but disputed that the policy required them to record Villegas's confession	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
policy, but never faced any discipline or consequence. Ex. 6, Allio Report at 9.	This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
114. Video equipment, tape recorders, video cassette tapes, and audio cassette tapes were available to CAP Detectives to record confessions and interrogations. Ex. 1, CAP Manual at CITY 12826 (Tape recorders, video equipment, video cassette tapes and audio cassette tapes are available to Detectives, and “[a]nyone noticing a shortage of these supplies should report it to his supervisor or to the secretary for a restocking). Ex. 2, Moton Dep at 61:6–15 (above-mentioned CAP manual was in effect in 1993).	Undisputed.	
115. CAP detectives were required to record confessions, including juvenile confessions, and juvenile witness statements Ex. 1, CAP Manual at CITY 12849–12850.	Disputed.	Plaintiff’s Ex. 10, 225:14-226 :10

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 10, Messer Dep at 225:22–226:10.		
116. CAP detectives did not believe it was required to record confessions or witness statements. Ex. 22, Earl Arbogast Dep at 67:3–13. Ex. 31, Graves Dep at 50:23–25, 52:1–5.	Undisputed	
117. Not a single IA file produced by the City regarding investigative misconduct involved an investigation of failure to record interrogations or confessions Ex. 41, Letter of May 23, 2022 (City agreeing to produce all IA files in categories including failure to preserve evidence, coerced statements and confessions, and custodial interrogation from 1988 to 1993 time period. The City produced no complaint relating to failures to record witness statements or confessions).	Undisputed, but disputed that the policy required recording of interrogations or confessions.	
118. Assistant Chief Messer said that he was not aware of any internal affairs complaints for failure to video-record or otherwise record a confession in 1993. Ex. 10, Messer Dep at 193:11–194:11.	Undisputed. But disputed that the policy required recording. (use this excerpt)	Plaintiff's Ex. 10 193:11-194:11
119. Defendants Graves, Marquez, and Arbogast did not record statements or confessions from any of the they interrogated and took statements from in the England-Lazo investigation.	Undisputed	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 6, Allio Report at 8–9, 18–19, 46.		
120. Not even a single statement of eleven potential suspects in the England-Lazo murder investigation was audio or video recorded, in violation of the City's paper policies. Ex. 6, Allio Report at 9.	Undisputed that the statements were not audio or video recorded, but disputed that the City policy required recording.	Plaintiff's Ex. 10 193:11-194:11
121. Defendants Marquez and Arbogast did not believe they did anything wrong in carrying out their interrogations in the England-Lazo investigation. Ex. 22, Earl Arbogast Dep at 286:22–287:14; Ex. 30, Marquez Dep at 262:6–11.	Undisputed.	
122. On paper, EPPD policies required CAP detectives to "document all findings accurately" and "make detailed reports" on their investigations Ex. 1, CAP Manual at CITY 12833, 12848.	Undisputed.	
123. Defendants Marquez, Graves, and Arbogast, in closing reports after Villegas's arrest, omitted key exonerating details such as that "Popeye" and "Droopy," who Mr. Villegas and his friends all named as present in the car during the shooting in their "confessions," could not have committed the murder because they had firm alibis including being	Undisputed that the closing reports say what they say. Disputed that they omitted these details. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
imprisoned and being on electronic monitoring. Ex. 6, Allio Report at 46. Ex. 66, Marquez Closing Report. Ex. 67, Graves Closing Report. Ex. 68, Arbogast Closing Report.	420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
124. Defendant Marquez wrote a "cover-up" report to explain inconsistencies in Plaintiff's false arrest. To cover for the fact that two supposed participants in the murders, "Popeye" and "Droopy," physically could not have been in the murder vehicle, Marquez wrote a report stating that Rodney Williams now denied that Popeye or Droopy were present. However, Marquez and other investigators never followed up to investigate why four witnesses had named them as present, who provided the gun if Popeye and Droopy were not there, and where the murder weapon or the car were ultimately left. Ex. 6, Allio Report at 33–34. Ex. 69, Rodney Williams Supplemental Report.	Disputed that there were any cover up reports. Disputed as to what the investigators investigated or failed to investigate. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
125. The Defendant officers committed numerous obvious policy violations in the Lazo-England investigation, including failing to take Plaintiff immediately to a juvenile facility after his arrest, but no discipline or investigation was ever conducted for misconduct in	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
the Lazo-England investigation. Ex. 6, Allio Report at 48–49.	420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
126. CAP Detectives were allowed to approve and finalize their own reports without supervision; this was an unofficial policy never documented in writing, and contradicted the City’s written policy. Ex. 6, Allio Report at 13. Ex. 2, Moton Dep at 79:19–21 (when a supplemental report is approved, that’s the final version); 80:3–9 (CAP detectives could approve their own reports); 80:23–25 (policy never documented in writing). Ex. 46, 1992 Procedures Manual, at CITY 21471–21472.	Disputed.	Attachment 2-F, Ocegueda 15:11-17:14; 18:21-20:13; 31:14-32:20; 32:21-34:1; 51:19-53:25]
127. For less serious crimes outside of CAP, complaint forms, witness statements, supplements, and other documents needed to be approved by supervisors, but CAP was an exception for every such form—supervisor review was deemed unimportant for murder investigations. Ex. 2, Moton Dep at 96:24–97:15.	Disputed. Pete Ocegueda (Super in CAP) would have meetings to discuss cases and would regularly meet with his subordinates. He reviewed CAP investigations once complete before going to DA. He reviewed Villegas file before it went to the DA. CAP unit regularly communicated with and worked with DA’s office. The DA also reviews files and can call with instructions to gather additional evidence or statements. The DA’s	Attachment 2-F, Ocegueda, Depo 15:11-17:14; 18:21-20:13; 31:14-32:20; 32:21-34:1; 51:19-53:25 Attachment 2-G, Loya Depo 113:19-114:6; 135:6-25; 136:18-20; 216:4-217:14

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	office actively involved during investigation of “major” cases. The DA’s office attended internal CAP meetings during major investigation to achieve compliance with legal standards	
128. Sergeants did not regularly review the reports of CAP detectives Ex. 22, Def Earl Arbogast Dep at 41:11–21.	Disputed. Pete Ocegueda (Super in CAP) would have meetings to discuss cases and would regularly meet with his subordinates. He reviewed CAP investigations once complete before going to DA. He reviewed Villegas file before it went to the DA. CAP unit regularly communicated with and worked with DA’s office. The DA also reviews files and can call with instructions to gather additional evidence or statements. The DA’s office actively involved during investigation of “major” cases. The DA’s office attended internal CAP meetings during major investigation to achieve compliance with legal standards	Attachment 2-F, Ocegueda, Depo 15:11-17:14; 18:21-20:13; 31:14-32:20; 32:21-34:1; 51:19-53:25 Attachment 2-G, Loya Depo 113:19-114:6; 135:6-25; 136:18-20; 216:4-217:14
129. By exempting CAP detectives from a report supervision requirement, the result was a total lack of case management and oversight and an inability to ensure “proper investigative action and documentation.” Ex. 6, Allio Report at 13.	Disputed. Pete Ocegueda (Super in CAP) would have meetings to discuss cases and would regularly meet with his subordinates. He reviewed CAP investigations once complete before going to DA. He reviewed Villegas file before it went to the DA. CAP unit regularly	Attachment 2-F, Ocegueda, Depo 15:11-17:14; 18:21-20:13; 31:14-32:20; 32:21-34:1; 51:19-53:25 Attachment 2-G, Loya Depo 113:19-114:6; 135:6-25; 136:18-20; 216:4-217:14

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	communicated with and worked with DA's office. The DA also reviews files and can call with instructions to gather additional evidence or statements. The DA's office actively involved during investigation of "major" cases. The DA's office attended internal CAP meetings during major investigation to achieve compliance with legal standards	
130. By exempting CAP detectives from a report supervision requirement, the EPPD prevented supervisors from ensuring proper investigative actions, proper documentation, timely input on the investigation, and the ability to correct errors in policy, procedure, law, or investigative action. Ex. 6, Allio Report at 13.	This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
131. Shortly after Plaintiff's arrest, Marquez wrote a search warrant affidavit where he swore to numerous facts blatantly contradicted by Marquez's reports. In the affidavit, Marquez swore that Plaintiff admitted to being a "VNE" member, that he admitted to shooting England and Lazo, and that he admitted owning the murder weapon. However, none of	Disputed, the documents speak for themselves, but the opinions from Plaintiff's expert are mere speculation. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
those “facts” are documented in Marquez’s reports or the police investigation; in fact, Plaintiff’s coerced confession typed by Marquez says that Plaintiff was “given a gun” by someone else, not that Plaintiff owned the gun, among other inconsistencies. Ex. 47, Marquez arrest affidavit at 2. Ex. 48, Plaintiff Villegas’s coerced confession at 2. Ex. 6, Allio Report at 45.	undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
132. Defendant Marquez has never feared EPPD’s internal affairs department and has never altered how he investigated a case because of internal affairs. Ex. 30, Marquez Dep at 237:25–238:5.	Undisputed	
133. Starting in 1984, homicide detective Defendant Alfonso Marquez received numerous commendations for interviewing and interrogating suspects, including his “uncanny ability to obtain confessions on tough cases.” Ex. 4, Rosenthal Report at 22.	Defendant does not dispute the fact itself, but disputes any implications or conclusions drawn from the fact by the expert as being opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987).	
134. Marquez and CAP received a letter of commendation for their 100% homicide clearance rate	Defendant does not dispute the fact itself, but disputes any implications or conclusions drawn from the fact by the expert as being	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 4, Rosenthal Report at 22.	opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987).	
135. EPPD set an expectation that 100% of all homicides would be cleared. Ex. 4, Rosenthal Report at 23.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
136. El Paso maintained an inexplicably high homicide clearance rate of fifteen to thirty-six percentage points above the national average in the five years leading up to Plaintiff’s arrest. Ex. 4, Rosenthal Report at 23–24.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>137. As Dr. Rosenthal notes, such an overemphasis on clearance rates at the expense of integrity and constitutional policing, combined with a failure to enforce ethics and integrity violations, increases the risk of employees fabricating evidence and using excessive force to obtain false confessions—a problem referred to as “Noble Cause” corruption. Ex. 4, Rosenthal Report at 23–24.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>138. The EPPD exhibited an unnaturally high clearance rate and emphasized aggressive interrogation and clearances without emphasizing the need to respect suspects’ constitutional rights. Ex. 4, Rosenthal Report at 6.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>139. The El Paso Police Department displayed no interest in minimizing the risk of Noble Cause corruption despite the aforementioned patterns. Ex. 4, Rosenthal Report at 26.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987).</p>	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
140. Emphasizing high case clearances as the primary goal lays a "foundation" for improper homicide investigations. Per expert Joseph Allio, "using clearance rates as a job performance measure may actually encourage officers to value making more arrests, not necessarily solving crimes." Ex. 6, Allio Report at 7–8.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
141. In 1984, early in his career as a homicide detective, Marquez testified during a suppression hearing about a confession he had taken in a murder investigation. Under oath, he testified that other detectives had interviewed the suspect at the start, that he was not present earlier in the suspect's investigation, and that he had not started interrogating the suspect until 1:00 am. According to EPPD investigators, this was a lie—everyone interviewed said that Marquez started interviewing the suspect at 9:00 pm and continued interrogating her for eight full hours. But investigators	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>never discovered why Marquez told this lie—to protect the confession, to cover up misconduct, or for some other reason—because EPPD did not interview Marquez about the discrepancy or investigate him for dishonesty, but instead allowed him to give a short, self-serving, and conclusory statement. Marquez was not disciplined. Ex. 3, IA 84-079, at CITY 59454–56, 59459–64, 59478–79. Ex. 4, Rosenthal Report at 7, 99-100, 102-104.</p>		
<p>142. In 1988, Detective Marquez falsified expense reports to receive greater reimbursement from the City. Internal Affairs was advised by Assistant Chief Messer not to confront Marquez about the investigation so that Marquez could concentrate on homicide investigations. Marquez was punished for the theft, but not for lying, even though he (unlike another involved detective) lied to investigators about his actions and statements. Id. at Marquez was suspended, but the City imposed the same punishment on Marquez, who continually lied about his theft, and the other detective who admitted his mistake. Ex. 49, CP88-014 at CITY 44531, 44568, 44575–82.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 4, Rosenthal Report at 8-9, 108-11.		
<p>143. In 1992, in CP92-296, Marquez was involved in an incident involving rudeness and unauthorized transport of a civilian in his police vehicle. The City conducted no investigation or findings regarding false statements made by Marquez during the investigation. Although it was clear from the face of the investigation that Marquez lied that he was providing a public service by transporting a child in need and failing to acknowledge that he was actually doing a favor for his girlfriend in picking her son up from school while driving a city vehicle, the City never investigated or disciplined Marquez for lying. Instead, it gave him a short suspension for rudeness and unauthorized use of a city vehicle.</p> <p>Ex. 50, CP92-296 at CITY 54941, 54995–55000.</p> <p>Ex. 4, Rosenthal Report at 8–9, 120–123.</p>	<p>Undisputed that Marquez was involved in the incident. Disputed that the incident was not investigated and Marquez was punished for violations of City policy. The rest of the allegations are disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	City’s Reply Ex. R

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>144. On August 27, 1992, another Internal Affairs case was initiated against Detective Marquez after it was discovered that Detective Marquez had 11 unpaid parking tickets (CP 93-019). Marquez's claim that he was unaware of the existence of the 11 unpaid parking tickets was accepted at face value, with no further inquiry. No police officer would accept such a statement from a civilian as true, without further inquiry, and yet, the City appeared to have no interest in examining this claim, which appeared on its face to be false (in the absence of any evidence to explain how Marquez would have been unaware of the 11 outstanding parking tickets). Detective Marquez received a clear signal that there was no expectation that he act with integrity when faced with an inquiry into his actions or performance as a police officer on or off-duty. Ex. 51, CP93-019 at CITY 55036, 55056. Ex. 4, Rosenthal Report at 8, 10, 126.</p>	<p>Undisputed that Marquez was investigated and punished for 11 outstanding parking tickets in a City vehicle. The rest of the allegations are disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p>	<p>City's Reply Ex. S</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>145. In 1992, in CP92-358, Detective Marquez received a sustained complaint for failing to adequately notify a next-of-kin, for which he received a Written Reprimand. There were inconsistencies between the statement given by Detective Marquez (that he had requested the decedent's body be fingerprinted) and the statement by a Lieutenant that no such request had been made. Although a finding of dereliction of duty was sustained, once again no further inquiry into dishonesty was made by the City, and no investigation for dishonesty or discipline for integrity violations was made by the City.</p> <p>Ex. 52, CP92-358 at CITY 55038, 55022–23, 55027. Ex. 4, Rosenthal Report at 8, 10, 124–25.</p>	<p>Undisputed that Marquez was investigated for and punished for failing to adequately identify a dead person. The rest of the allegations are disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p>	<p>City's Reply Ex. T</p>
<p>146. In CP 82-300, Arbogast's supervisor believed he was lying but took no action to determine the truth; no witness or partner officers were interviewed and no written statements were taken. Arbogast was not investigated or disciplined for lying; instead, he only received a written reprimand for insubordination.</p> <p>Ex. 4, Rosenthal Report at 11–13, 155–57 Ex. 53, CP82-300 at CITY 55621–31.</p>	<p>Undisputed that CP82-300 involves a 60-cent key ring and an allegation of insubordination. Disputed that Arbogast was actually accused of lying. The rest of these allegations are disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987).</p>	<p>City's Reply Ex. U</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
147. In IA 85-26, Arbogast's partner was accused of antagonizing an arrestee and the EPPD failed to investigate or discipline Arbogast for lying even though Arbogast's statements were directly contradictory to the investigation's findings. Arbogast received the message that the EPPD "was unconcerned about truthfulness during an investigation and unwilling to act on such misconduct." Ex. 4, Rosenthal Report at 11, 13, 163–65 Ex. 54, IA 85-26 at CITY 55917, 55930–33, 55948–50.	Undisputed that Arbogast's partner was accused of antagonizing an arrestee. Disputed that Arbogast was investigated for or determined to be lying. The rest of the allegations are disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	City's Reply Ex. V
148. In IA 85-197, officers from an external agency accused Graves of impeding an investigation. The City rejected Graves's account of the incident and disciplined him for unprofessional acts. Yet even though Graves lied during the investigation, the City never investigated Graves for dishonesty or integrity violations or disciplined him for such violations. Graves received a	Undisputed that Graves was accused of interfering with an outside agency's investigation and was reprimanded for his conduct. The remaining allegations are disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and	City's Reply Ex. W

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>written reprimand, but was not punished for dishonesty. Ex. 4, Rosenthal Report at 14–15, 177–80. Ex. 55, IA 85-197 at CITY 57630–33, 57639–54.</p>	<p>therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>149. CP 86-131 involved an intentional cover-up of misconduct in a dispute between officers. Multiple officers, including Graves, were found to have participated in the cover-up. Graves’s sergeant specifically stated that he found inconsistencies in all of the subject officers’ statements, including Graves’s statement. However, the Chief’s disposition did not mention the coverup and did not include any punishment for or mention of dishonesty by the officers. Graves received a 1-day suspension, but received no punishment for dishonesty despite evidence of a coordinated cover-up among officers. In fact, Graves was investigated just for unprofessional conduct and failure to make an arrest, but not for any honesty or integrity violations. The City’s failure to discipline Graves for dishonesty messaged that integrity was not a value Graves was expected to uphold.</p>	<p>Undisputed Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	<p>City’s Reply Ex. X</p>

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>Ex. 4, Rosenthal Report at 14, 16, 183–92 & n.3. Ex. 56, CP 86-131 at CITY 57449–56, 57539–42, 57584, 57591–97.</p>		
<p>150. In the ten complaints involving evidence of dishonesty by Marquez, Graves, and Arbogast, a pattern emerged: the City failed to ask follow-up questions about dishonesty, conduct follow-up investigations into dishonesty, or impose serious discipline for dishonesty, even when officers continued in their dishonesty over the course of the investigation. Ex. 4, Rosenthal Report at 14, 16, 183–92 & n.3. Ex. 56, CP 86-131 at CITY 57449–56, 57539–42, 57584, 57591–97.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>151. Defendants Marquez, Arbogast, and Graves "did not fear that obvious inconsistencies in their investigation would be revealed or punished" in regards to the England-Lazo investigation. They were willing to conduct an investigation with such obvious inconsistencies because of “a larger failure within the El Paso Police Department to adequately supervise or punish acts of dishonesty.” Ex. 6, Allio Report at 53.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>152. The City’s emphasis on a 100% homicide clearance goal while ignoring integrity violations sent a predictable message: getting confessions was more important than integrity in investigations. Ex. 4, Rosenthal Report at 27.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>153. In 1990 complaint CP 90-214, an officer was disciplined for mishandling evidence, receiving a two-day suspension for neglect of duty. Evidence in the case file revealed that the officer had lied to a detective, stating that he had processed a firearm for fingerprints and had found none. The investigation revealed that the handgun was never processed. However, the officer was never investigated or discipline for dishonesty. Chief Scagno personally approved the discipline. Ex. 21, Rosenthal Rebuttal at 4. Ex. 57, CP 90-214 at CITY 62666–67.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	

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<p>154. In 1990 complaint CP 90-089, the Chief noted that the officer engaged in a “dereliction” of duty that made it impossible to prosecute the case he had been assigned to investigate. Even more significantly, the Chief concluded that, contrary to the officer’s claims otherwise, “[i]t is my opinion that he had no intention of tagging the property in since he called in the report rather than type it out and turn in the property.” Still, the officer was investigated only for neglect of duty and not for dishonesty or integrity violations. Even though the Chief believed that the officer was not credible in his statement to Internal Affairs, he imposed only a three-day suspension. John Scagno personally approved the discipline. Ex. 21, Rosenthal Rebuttal at 4. Ex. 58, CP 90-089 at CITY 76479, 76481, 76494, 76501, 76526.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>155. In 1991 complaint CP 91-156, a five-day suspension was imposed and the officer received a disciplinary transfer for failing to seize evidence at scene (shell casings) of a shooting and, on a separate occasion, failing to process suspects as requested by a Detective In one statement, the subject officer claimed</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert</p>	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
<p>that test equipment was unavailable to him, which was not true. No action or follow-up appeared to have been taken relating to dishonesty and inconsistencies in the subject officer's statement. Chief Scagno personally approved the discipline. Ex. 21, Rosenthal Rebuttal at 7.</p> <p>Ex. 59, CP 91-156 at CITY 62548, 62552–62563, 62574, 62578, 62587–62588.</p>	<p>and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p>	
<p>156. In 1990 complaint IA 90-097, it was alleged that a sergeant accused of physical abuse had intentionally misrepresented facts in his administrative statement, among other allegations. That complaint was only minimally investigated—the offending sergeant was allowed to give a vague and self-serving statement where he claimed he couldn't remember what happened, which was not followed by further interviews of other witness officers. The complaint was ultimately unsustainable. Chief Scagno received notice, as the disciplinary file was forwarded to him and a disciplinary board presented him with a recommendation. Ex. 21, Rosenthal Rebuttal at 5.</p> <p>Ex. 60, IA 90-097 at CITY 72266, 72302–72304, 72363, 72365.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p>	

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<p>157. In 1992 complaint CP 92-205, an officer was accused of choking a handcuffed juvenile prisoner. A subject officer testified contrary to his initial reports, but was never investigated for lying and the inconsistency was never resolved. Chief Scagno personally approved discipline, although no discipline was issued for lying.</p> <p>Ex. 21, Rosenthal Rebuttal at 6.</p> <p>Ex. 61, CP 92-205 at CITY 63931–63951, 63959, 63805–63806.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>158. In 1989 complaint IA 89-070, an officer was accused of kicking and slapping a fourteen-year-old boy without provocation. The complaint of physical abuse was sustained, but the investigation ignored that multiple officers lied about whether the misconduct occurred. No investigation or disciplinary findings were made for lying or dishonesty. Chief Scagno received notice including a letter directed to him from the FBI regarding a civil rights complaint.</p> <p>Ex. 21, Rosenthal Rebuttal at 6.</p> <p>Ex. 62, IA 89-070 at CITY 68987, 68990, 68992, 69032.</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>159. In 1989 complaint CP89-194, a lieutenant was sustained for beating auto theft suspects in front of other officers. Despite</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an</p>	

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<p>significant inconsistencies in the subject officer's statements and other evidence, the lieutenant was never investigated or disciplined for lying. No integrity or honesty issues were investigated on the part of any involved officers, despite evidence that they may have lied or failed to report what they saw. The lieutenant was allowed to maintain his command position, but officers under him were punished by having their future assignments limited (they could not be assigned under the subject lieutenant). Chief Scagno had notice of the incident and personally approved the discipline on the subject officer.</p> <p>Ex. 21, Rosenthal Rebuttal at 6–7.</p> <p>Ex. 7, CP 89-194 at CITY 61100–61101, 61160.</p>	<p>expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	
<p>160. In 1993 complaint CP 93-264, a field training officer instructed a probationary officer to lie in a police report. The probationary officer resigned after describing retaliation against him for reporting his supervisor. The supervisor threatened retaliation against the probationary officer if he reported the supervisor’s misconduct and admitted to as much in statements to internal affairs. There was no indication of any discipline against one subject officer</p>	<p>Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.</p>	

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<p>for lying to Internal Affairs when he denied making comments which he was found to have made. Chief Scagno had notice and personally approved the discipline.</p> <p>Ex. 21, Rosenthal Rebuttal at 8–9.</p> <p>Ex. 64, CP 93-264 at CITY 64918–20, 64939–40.</p>		
<p>161. In 1991 complaint CP 91-262, a senior officer received a 10-day suspensions for preparing a false affidavit for purposes of sustaining an illegal arrest and counseling a new probationary officer to sign it without permission. The senior officer admitted to having committed similar conduct in the past and alleged that other officers had done so as well. Although the senior officer advised Internal Affairs that multiple other officers had committed similar violations in the past, that fact was intentionally omitted from his discipline letter. The senior officer was not asked for the identity of other officers who had committed similar misconduct and no follow-up discipline or allegation was initiated for those officers' misconduct. Chief Scagno had notice of the incident: the complaint file was distributed to his office and was marked for</p>	<p>Disputed.</p> <p>As to the use of Rosenthal's report, and opinions and implications, conclusions and arguments drawn by him regarding the file, this is merely an expert opinion and speculation.</p> <p>“Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i>, 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.</p>	

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distribution directly to the Chief of Police (Scagno). Ex. 21, Rosenthal Rebuttal at 8. Ex. 63, CP 91-262 at CITY 62762, 62787, 62791, 62823, 62846.		
162. The City did not pursue evidence of widespread false arrests and perjury and lying in support of those arrests as indicated in CP 91–262, and did not open additional disciplinary investigations to address that pattern of misconduct. PUF ¶ 161. Ex. 41, Letter of May 23, 2022 (City agreeing to produce all IA files in categories including coerced statements and confessions, excessive force during interview/interrogation, false arrest, and custodial interrogation from 1988 to 1993 time period). The City produced no complaint or file involving any follow-up from CP 91-262.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
163. In the vast majority of cases reviewed by Dr. Rosenthal, there were deficient IA practices, failures to act upon integrity-related misconduct, failure to impose appropriate discipline and failures in documentation. Ex. 21, Rosenthal Rebuttal at 14.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	Exclude. Further disputed opinions exist in the City's expert report.	
164. In administering its disciplinary system, "EPPD failed to demonstrate concern for officer integrity and failed to incentivize El Paso police officers to tell the truth", according to Dr. Rosenthal's expert opinion. Ex. 21, Rosenthal Rebuttal at 3–4.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
165. The EPPD ignored integrity violations so that it could secure more convictions, especially in murder investigations. Ex. 4, Rosenthal Report at 6, 22–24, 27, 29. Ex. 6, Allio Report at 6–8, 42–43. Ex. 21, Rosenthal Rebuttal at 11.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
166. It is especially important to monitor the integrity of detectives because they “have a great deal of discretion in the performance of their duties	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
and are subject to minimal direct supervision." Ex. 4, Rosenthal Report at 27.	so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
167. Not a single supervisory task - such as investigative conferences, reviews of reports, detective assignments, crime scene supervision, or other tasks - was documented in the England-Lazo murder investigation. As a result, many omissions, errors, contradictions, and policy violations went uncorrected. Ex. 6, Allio Report at 13.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
168. Even though Marquez consistently violated the City’s paper policies—like writing timely reports, writing complete reports, and getting parental permission before interrogating juveniles—his personnel file shows that he was not disciplined for those failures, but was instead consistently praised for his success in interrogations and especially obtaining confessions. Ex. 6, Allio Report at 50. Ex. 11, Marquez Personnel file, at CITY 7169, 7172,	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	

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7180, 7183, 7187, 7191, 7244, 7246, 7249, 7252, 7261, 7290, 7295, 7306, 7328.		
169. The City knew that CAP detectives must be held to a higher standard, and that it was especially important to do so because of the seriousness and importance of homicide investigations. Ex. 2, Moton Dep at 45:17–46:8. Ex. 10, Messer Dep at 260:9–14.	Undisputed.	
170. The City allowed CAP detectives to violate its policies and remain ignorant of it. Ex. 6, Allio Report at 50.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
171. The City evaluated Defendant Marquez and other CAP detectives for their ability to get convictions, not their compliance with EPPD's policies Ex. 6, Allio Report at 50.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an	

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	undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
172. The City conducted no follow-up investigation and asked no follow-up questions when evidence of dishonesty arose during disciplinary investigations. Ex. 4, Rosenthal Report at 5–6.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
173. The City also failed to impose serious discipline on officers for their deception during the course of investigations. Ex. 4, Rosenthal Report at 5–6.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	

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174. Assistant Chief Messer testified that it was not possible to thoroughly investigate officers' lies during administrative investigations, asking sarcastically: "[if an officer] sticks to his story . . . how do you investigate that? Enlighten me. . . . [T]he way you investigate an officer for lying is you call him in, and you ask him, 'Are you lying or not?' . . . [W]hy take it further?" Ex. 10, Messer Dep at 212:15–213:14.	Undisputed	
175. EPPD Internal Affairs failed to document how statements were provided and did not record interviews, as would be necessary to prevent improper influence such as leading questions and witness coaching; formal interviews were rarely audio or video recorded; and the City did not even allow officers to be terminated for deliberately lying unless they had previously been found to have committed that offense. Ex. 4, Rosenthal Report at 5–6.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
176. As assessed by experts Richard Rosenthal and Joseph Allio, the City's failure to terminate—or even consider terminating—officers for lying was a notable and distinct failure of EPPD's disciplinary system.	Disputed. This is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d	

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Ex. 4, Rosenthal Report at 5–6, 21–22. Ex. 6, Allio Report at 53.	420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
177. The City declined to acknowledge its widespread integrity problems. It decided not to pursue integrity violations brought to its attention. And it decided to ignore evidence of systemic misconduct. Ex. 21, Rosenthal Rebuttal at 11.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert’s testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
178. As of 1993, Chief Scagno did not consider any integrity issue within the EPPD to require departmental action Ex. 2, Moton Dep at 220:16–18.	Disputed. Question merely asks if Chief Scagno has anything he can think of that is incorrect or incomplete.	Plaintiff’s Exhibit 2. 220:16-18
179. The City denied notice of any flaws in its disciplinary processes as of 1993. Ex. 2, Moton Dep at 218:9–10.	Disputed. In Plaintiff’s Exhibit 2, 217:-218:, Commander Moton stated the department was not aware of any broader problems about flaws in the disciplinary process.	Plaintiff’s Exhibit 2, 217:14-218:21
180. As of 1993, it was understood that there was an especially critical risk of misconduct in homicide investigations because of the pressure to solve cases and the public pressure	Disputed. The Department held high standards for CAP detectives	Plaintiff’s Exhibit 2, 45:10-46:8

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
surrounding those cases. The City was aware of the need to hold homicide detectives to higher scrutiny. Ex. 6, Allio Report at 48. Ex. 2, Moton Dep at 45:17-46:8.		
181. The police chief received notice of all lawsuits involving EPPD and decides whether to pass them on to internal affairs. Ex. 2, Moton Dep at 196:7-22.	Undisputed.	
182. The police chief made final decisions on any complaints involving “serious” allegations, and the Chief reviewed decisions with the potential for a substantial suspension, demotion, or firing. Complaints that might end up with a “decent term suspension,” demotion, or firing were given to Scagno Ex. 2, Moton Dep at 208:22-209:1. Ex. 8, Scagno Dep at 54:16-55:4.	Undisputed	
183. In 1993, and prior, the City never transferred a detective out of CAP for dishonesty. Ex. 2, Moton Dep at 210:18-23.	Undisputed.	
184. The only kinds of misconduct Messer described as warranting transfer out of CAP were "Inefficiency, not maintaining their caseload. In some cases, off-duty conduct. In some cases, because they were just plain lazy." He did	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
not mention dishonesty or integrity issues. Ex. 10, Messer Dep at 260:21–261:2.		
185. Even when Plaintiff was retried in 2018, the City used fabricated witness statements obtained through threats to try to convict him. Defendants Sanchez and Loya picked witness Oscar Gomez up on a traffic warrant but took him to the Crimes Against Persons office and interviewed him for two hours. Detectives told Gomez that they wanted him to say that Daniel Villegas admitted to the shooting, and threatened to put Gomez in jail if he didn't say what Detectives wanted him to say. Gomez denied that Plaintiff made any admission, but Defendant Sanchez said "I don't want to hear that" and took a coerced and fabricated statement implicating Plaintiff from Gomez. Ex. 78, Gomez Testimony, at GRAVES_ 698:24–99:12; 699:23–700:1; 700:10–19; 701:11–23; 702:4–15.	Undisputed as to Gomez' testimony.	
186. Crimes Against Persons was working a lot of homicide investigations in 1993 - it was a "bad year" for homicides. Ex. 2, Moton Dep at 214:3–12.	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
187. The City did nothing to increase monitoring of Crimes Against Persons in response to the high case volume. Instead of implementing measures to identify and address misconduct by homicide detectives, the City decided to just "trust" them to do their jobs. Ex. 2, Moton Dep at 215:22–16:5.	Undisputed.	
188. Assistant Chief Messer acknowledged that units often operated out of policy and with unofficial policies, but admitted that the City did not audit or investigate but allowed to continue until "it hits the fan." Ex. 10, Messer Dep at 189:23–90:10.	Disputed at to Messer admitting the City did not audit or investigate.	
189. The City received notice of alleged coerced confessions and statements from criminal court, but did not initiate internal affairs investigations of those allegations. Ex. 10, Messer Dep at 172:13–18.	Disputed. If it had come to Internal Affairs it would have been investigated.	Plaintiff's Ex. 10, 172:20-173:14
190. Assistant Chief Messer discounted allegations of policy violations from anyone he perceived as aligned with a defendant, including any witnesses who were "testifying on behalf of the defendant." Ex. 10, Messer Dep at 223:18–21.	Undisputed. Messer stated he would tend to look at them a little slant wise but did not state he would discount allegations.	Plaintiff's Ex. 10, 223:19-21

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
191. In 1993, the procedure after a suspect signed a Miranda card was to keep that card with the police paperwork and eventually with an evidence form and either to ID and Records or in an evidence locker for the case. Ex. 32, Ortega Dep at 204:25–205:2; 206:1–22.	Undisputed.	
192. Messer admitted that Det. Marquez's disciplinary history would "give [him] pause" due to "the overall record" and whether Marquez should be assigned to Crimes Against Persons, including due to "the number of complaints that were sustained." Ex. 10, Messer Dep at 264:15–265:15.	Undisputed. However, a number of the complaints were when Marquez was not in CAP.	
193. Detectives were not instructed to find and record evidence of a suspect's innocence, as consistent with their constitutional rights; instead, the City's message to Detectives was "really, it was just to solve the case." As a result, detectives were motivated to clear cases, not to find the truth. Ex. 6, Allio Report at 6. Ex. 22, Earl Arbogast Dep at 74:19–75:3.	Undisputed as to testimony in quotes. Disputed. As to Allio's report, this is merely an expert opinion and speculation. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Further disputed opinions exist in the City's expert report.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
194. Dr. Rosenthal's report addressed “whether [the City] had notice of violations . . . based on a pattern of documented violations.” He opined that the Department emphasized homicide clearances at the expense of constitutional policing, as exemplified by the frequent decision to ignore integrity violations and its focus on clearing cases at all costs. Ex. 4, Rosenthal Report at 3, 28–29. Ex. 21, Rosenthal Rebuttal Report.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
195. A police officer who has reason to believe that his or her word will be accepted, regardless of any evidence otherwise, is more likely to engage in constitutional violations and engage in the type of corruption that results in wrongful convictions. Ex. 4, Rosenthal Report at 28.	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City’s expert report.	
196. The Department inadequately supervised Defendants Marquez, Arbogast, and Graves. El Paso Police Department supervisors became aware that these detectives were readily willing to lie to protect themselves from being held accountable by the Department and their	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987).	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
supervisors. On multiple occasions, the defendant-officers were sent clear messages that they were responsible to no one but themselves. Ex. 4, Rosenthal Report at 28–29.	Additionally this expert and his opinions are the subject of a Motion to Exclude. Further disputed opinions exist in the City's expert report.	
197. Supervisor Dwain Johnson expressed the Department's attitude towards integrity allegations in his statement to internal affairs when Detective Marquez was accused of perjury: "Det. Marquez never had any criminal intent to purjure [sic] himself. . . . If he made a mistake, it certainly doesn't mean that he should have to endure all of the psychological strain that he has gone through just because a lawyer knows how to manipulate the Justice System and try to make a smoke screen to cover his own courtroom inadequacies. The mere fact that Det. Marquez went through all of this is nothing less than an outrage, and I personally believe it should stop here and now." Ex. 3, IA 84-079 at CITY 59438.	Undisputed.	
198. Mr. Villegas is innocent of the Lazo and England murders. Ex. 71 at 827:23-24 (Villegas 12.12.94 testimony).	Disputed.	Plaintiff was convicted of murder and has never established actual innocence.
199. Mr. Villegas was incarcerated nearly 20 years	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
for the Lazo and England murders. Ex. 79 at 50:6-7 (Villegas 9.15.11 testimony).		
200. Mr. Villegas's, Rodney Williams's, and Marcos Gonzalez's confessions each tell the same fabricated story: that Mr. Villegas, Williams, and Gonzalez participated in the murders of Armando Lazo and Robert England along with Enrique Ramirez ("Popeye") and Fernando Lujan ("Droopy"). Ex. 72 (Villegas statement); Ex. 73 (Williams statement); Ex. 74 (Gonzalez statement).	Undisputed that Plaintiff, Williams, and Gonzalez' confessions detail the same story. Disputed that they are fabricated.	City's Reply Ex. M
201. Enrique Ramirez (known by the nickname "Popeye") was incarcerated and Fernando Lujan (known by the nickname "Droopy") was on electronic monitoring and miles away from the murder at the time of the murder. Ex. 30, at 250:7-51:21, 253:6-16 (Marquez deposition); Ex. 31, at 164:8-15 (Graves deposition).	Undisputed.	
202. On April 21, 1993, about four to five detectives came into Mr. Villegas's house asking for Marcos Gonzalez. Ex. 75 at 220:11-25 (Villegas 12.1.94 testimony).	Disputed. Marquez along with Ortega went to his house. Other officers assisted them.	Attachment 2-A Marquez Depo 198:3-6
203. At the time, Mr. Villegas was only 16 years old. Ex. 76 (Villegas Arrest Report).	Undisputed.	
204. When Mr. Villegas saw Detectives taking Gonzalez away, he asked why	Undisputed that Plaintiff testified to this.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Gonzalez was being taken away. Ex. 75 at 220:14-18 (Villegas 12.1.94 testimony); Ex. 71 at 813:6-9 (Villegas 12.12.94 testimony).		
205. In response, the detectives told Mr. Villegas he was under arrest too, and Marquez grabbed him and handcuffed him tightly. Ex. 75 at 220:15-21 (Villegas 12.1.94 testimony); Ex. 71 at 813:10-12 (Villegas 12.12.94 testimony).	Undisputed that Plaintiff testified to this.	
206. Marquez and another detective told Mr. Villegas that they had them for murder, that they had killed two people, and Marquez told him, "I am going to take you to kick your ass." Ex. 71 at 813:19-24 (Villegas 12.12.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
207. Mr. Villegas was arrested at about 10 o'clock. None of the arresting officers asked for parental permission to question Mr. Villegas. Ex. 75 at 227:20-21 (Villegas 12.1.94 testimony), Ex. 31 at 153:1-12 (Graves deposition).	Disputed. When the officers got to Plaintiff's house they told Plaintiff's mom they needed to speak with Plaintiff. They called Plaintiff and came out. Det. Marquez arrived at Plaintiff's home approximately 11:00 o'clock as he wrote the time he gave Plaintiff his Miranda on the Miranda card.	Attachment 2-A Marquez Depo 189:7-13; 190:20-191:1
208. Throughout his interrogation, Mr. Villegas was handcuffed. Ex. 75 at 243:17-24 (Villegas 12.1.94 testimony).	Undisputed that Plaintiff testified to this.	
209. The Detectives placed Mr. Villegas into a police car and drove Mr. Villegas past a	Undisputed that Plaintiff testified to this.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
house they identified as Droopy's house. Ex. 77 at 29:17-30:8 (Villegas 9.15.11 testimony).		
210. Mr. Villegas did not know why the detectives drove him past Droopy's house.	Undisputed that Plaintiff testified to this.	
211. Detective Marquez asked Mr. Villegas if he knew someone named Snoopy; Mr. Villegas responded that he did not know a Snoopy, but he knew someone nicknamed Droopy. Ex. 77 at 30:6-8 (Villegas 9.15.11 testimony).	Undisputed that Plaintiff testified to this.	
212. The detectives then drove Mr. Villegas to the parking lot by Northpark Mall. Ex. 75 at 222:8-17 (Villegas 12.1.94 testimony).	Undisputed.	
213. When they parked in the parking lot, all of the detectives from the three or four police cars present got out of their cars and talked with one another. Ex. 75 at 222:10-15 (Villegas 12.1.94 testimony).	Disputed. Det. Marquez remembers stopping at a back of a building to thank the officers that assisted and to make sure everyone knew where each one was going.	Attachment 2-A Marquez Depo, 196:16-197:7 Attachment 2-C, Graves Depo, 150 :6-10 ; 153 :16-155 :4
214. Defendants Marquez, Arbogast, and Graves stepped outside their cars and discussed "what each one of us was going to do." Ex. 75 at 222:10-15 (Villegas 12.1.94 testimony).	Disputed. Det. Marquez remembers stopping at a back of a building to thank the officers that assisted and to make sure everyone knew where each one was going.	Attachment 2-A Marquez Depo, 196:16-197:7
215. The detectives talked with each other for about 30 minutes at Northpark Mall. Ex. 75 at 221:16-22:9 (Villegas 12.1.94 testimony); Ex. 77 at 31:5-9 (Villegas 9.15.11 testimony).	Disputed. Det. Marquez stated that they stopped for two minutes.	Attachment 2-A, Marquez Depo, 201:3-4 Attachment 2-C, Graves Depo, 150 :6-10 ; 153:16-155 :4

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
216. The detectives then drove Mr. Villegas to the Five Points police station. Mr. Villegas protested that he was a juvenile and should not be at the adult jail. The detectives ignored him, saying that he was 17. Ex. 75 at 224:18-225:8 (Villegas 12.1.94 testimony), Ex. 77 at 32:6-10 (Villegas 9.15.11 testimony).	Disputed. Det. Marquez drove Villegas to JIS.	Attachment 2-A, Marquez Depo, 201:22-202:2 Attachment 2-C, Graves Depo, 154:18-20
217. At the Five Points station, the Detectives put Mr. Villegas in a room by himself for 10-15 minutes, and then Defendants Marquez and Arbogast began talking to him. Ex. 75 at 225:13-22 (Villegas 12.1.94 testimony); Ex. 77 at 32:19-33:3 (Villegas 9.15.11 testimony).	Disputed. Plaintiff was taken to JIS. Undisputed that Plaintiff testified to this.	Attachment 2-A, Marquez Depo, 201:22-202:2
218. Defendant Marquez called him names, calling him a lucky punk, a stupid asshole, and then they took Mr. Villegas outside to a detective car. Ex. 75 at 226:1-5 (Villegas 12.1.94 testimony); Ex. 71 at 815:15-24 (Villegas 12.12.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
219. Defendant Marquez continued cursing at Mr. Villegas. Defendants Marquez and Arbogast drove Mr. Villegas to the juvenile detention facility. Ex. 75 at 226:6-13, 239:5-16 (Villegas 12.1.94 testimony); Ex. 77 at 33:1-20 (Villegas 9.15.11 testimony).	Undisputed that the officers took Plaintiff to the juvenile detention facility but contested regarding the cursing.	Attachment 2-A, Marquez Depo, 207:24-210:21

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
220. Mr. Villegas had been in police custody approximately one and a half hours to two hours before he was taken to the juvenile division. Ex. 75 at 238:10-13 (Villegas 12.1.94 testimony).	Disputed. Plaintiff was taken directly to JIS.	Attachment 2-A, Marquez Depo, 201:22-202:2
221. Defendant Marquez threatened Mr. Villegas that if he did not give a statement when they arrived at the juvenile office, they “would turn the car around and go to the desert and beat [him] right there.” Ex. 75 at 226:6-13 (Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
222. At the juvenile investigation service division, Defendant Marquez initially handcuffed Mr. Villegas to a chair and left him there for 20-30 minutes. Ex. 71 at 816:4-11 (Villegas 12.12.94 testimony).	Undisputed that Plaintiff testified to this.	
223. Thereafter, Defendant Marquez returned with two other detectives. Ex. 71 at 816:12-14 (Villegas 12.12.94 testimony).	Undisputed that Villegas testified to this.	
224. Before the detectives took Mr. Villegas to a juvenile probation officer, Defendant Marquez interrogated Mr. Villegas at the juvenile investigation station, telling him “[w]e know you did this shooting, motherfucker.” Ex. 77 at 34:23-35:15 (Villegas 9.15.11 testimony).	Disputed. Plaintiff was not questioned. Plaintiff was asked if he wanted to give a statement and when he said yes, they began doing the paperwork to present to the intake officer. Plaintiff was sitting in the office of the sergeant and the officers were around the vicinity.	Attachment 2-A, Marquez Depo, 202:3-4; 202:13-203:10; 204:6-15

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
225. Defendant Marquez also threatened that they would take Mr. Villegas to the County jail if he did not give a statement. They told Mr. Villegas at the County jail fat old men would rape him and he would get his ass kicked. Ex. 75 at 226:23-227:3 (Villegas 12.1.94 testimony); Ex. 77 at 35:9-24 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
226. Defendant Marquez stated, "I'm personally going to put you in a tank with a bunch of fat faggots and they're going to rape you." Ex. 71 at 818:17-25 (Villegas 12.12.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
227. Defendant Marquez cussed at Mr. Villegas over and over and repeated these threats to him. Mr. Villegas was afraid as a result. Ex. 75 at 227:2-7 (Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
228. Defendant Marquez accused Mr. Villegas of committing the murders. When Mr. Villegas denied committing the murders, Defendant Marquez would hit Mr. Villegas in the back of the head. Ex. 75 at 228:1-11 (Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
229. Defendant Marquez repeatedly hit Mr. Villegas in the back of the head. Ex. 75 at 228:7-11 (Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
230. Defendant Marquez would hit Mr. Villegas on the bottom of the back of his	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
head and then tell him, “now tell me the truth, punk.” Ex. 75 at 228:12-15 (Villegas 12.1.94 testimony).		
231. Defendant Marquez told him that they were all “low lifes”, but Plaintiff is the one who is going to get “fucked in jail.” Ex. 71 at 817:8-16 (Villegas 12.12.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
232. Defendant Marquez hit Mr. Villegas hard in the back of the head, and hit him with a hand that had a ring on it. Ex. 75 at 228:12-15 (Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
233. All told, Defendant Marquez hit Mr. Villegas four to five times. Ex. 75 at 228:16-19 (Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
234. All of the detectives were screaming at Mr. Villegas. Ex. 71 at 818:1-2 (Villegas 12.12.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
235. Mr. Villegas was “terrified out of his mind” as a result. Ex. 77 at 35:25-36:1 (Villegas 9.15.11 testimony).	Undisputed that Plaintiff testified to this.	
236. During his interrogation, Mr. Villegas was so terrified he was physically shaking and felt mentally paralyzed. Ex. 77 at 37:2-8 (Villegas 9.15.11 testimony).	Undisputed that Plaintiff testified to this.	
237. Defendant Marquez fed Mr. Villegas information about the murders to make his confession believable. Ex. 71 at 821:10-16 (Villegas 12.12.94 testimony).	Disputed. Det. Marquez let Plaintiff tell him in his own words what happened, once they were done he went over it again and Plaintiff	Attachment 2-A, Marquez Depo, 208:3-17

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
	narrated while Det. Marquez typed.	
238. Defendant Marquez fed Mr. Villegas facts, including that Villegas was in a vehicle that drove down Transmountain Road and that Popeye and Droopy were involved Ex. 71 at 821:10-16 (Villegas 12.12.94 testimony).	Disputed. Det. Marquez let Plaintiff tell him in his own words what happened, once they were done he went over it again and Plaintiff narrated while Det. Marquez typed.	Attachment 2-A, Marquez Depo, 208:3-17
239. Defendant Marquez fed Mr. Villegas information about he and the others supposedly going on a beer run. Ex. 77 at 46:6-22 (Villegas 9.15.11 testimony).	Disputed. Det. Marquez let Plaintiff tell him in his own words what happened, once they were done he went over it again and Plaintiff narrated while Det. Marquez typed.	Attachment 2-A, Marquez Depo, 208:3-17
240. Defendant Marquez told Mr. Villegas that if he gave a statement, he could go to the juvenile detention center, and not the County jail, but if he did not make a statement he would kick Mr. Villegas's ass. Ex. 71 at 822:12-20 (Villegas 12.12.94 testimony)	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
241. The detectives told Mr. Villegas that he had to continue cooperating "to the end." Mr. Villegas believed that if he did not continue cooperating all the way to the end, the detectives would beat him. Ex. 75 at 230:14-17 (Villegas 12.1.94 testimony)	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
242. All of the above misconduct occurred before Mr. Villegas was taken to see the juvenile probation officer. Ex. 77 at 34:23-37:8 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
243. During his interrogation, detectives used false evidence ploys, threats, and promises, each of which were known to increase the risk of involuntary and false confessions. Ex. 79 at 27-32 (Leo Report).	This is merely an expert opinion. "Without more than credentials and a subjective opinion, an expert's testimony that "it is so" is not admissible" and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987)	
244. Defendant Marquez told Mr. Villegas that he was going to take him in front of the intake officer and Mr. Villegas was supposed to tell the intake officer that he was going to make a statement. Ex. 77 at 37:9-18 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
245. Defendant Marquez told Mr. Villegas that if he didn't comply, Defendant Marquez would take him to the desert and whip his ass, and then take him to the County Jail to be raped by "fat faggots". Ex. 77 at 37:19-23 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
246. Defendant Marquez repeated these threats multiple times, and told Mr. Villegas not to tell the intake officer anything other than he wanted to make a statement. Ex. 77 at 37:23-38:2 (Villegas 9.15.11 testimony)	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
247. According to the Youth Officer assigned to the case, Defendants Marquez and Arbogast did not call for a youth officer to assist with the case until after Mr. Villegas had already confessed.	Disputed. Det. Ortega did not know what took place.	Plaintiff's Ex. 32, 180:18-23

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 32 at 178:16-181:4 (Ortega deposition)		
248. Based on Defendant Marquez's threats, Mr. Villegas did not tell the intake worker, Mario Aguilera, what Defendant Marquez had been saying to him. Ex. 77 at 38:10-15 (Villegas 9.15.11 testimony).	Undisputed that Plaintiff testified to this.	
249. Defendant Marquez then threatened Mr. Villegas that he needed to tell the magistrate judge that he wanted to make a statement, or else he would take Mr. Villegas to the desert and beat his ass. Ex. 77 at 38:19-39:7 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
250. When Mr. Villegas was first brought before the magistrate judge, he had already been interrogated and had spent approximately four hours in police custody. Ex. 75 at 225:13-231:25 (Villegas 12.1.94 testimony).	Undisputed that Plaintiff testified to this.	
251. Defendant Marquez stayed with Mr. Villegas until the Magistrate Judge arrived; when the Magistrate Judge left, Defendant Marquez returned to the room. Ex. 77 at 38:19-39:14 (Villegas 9.15.11 testimony).	Undisputed that Plaintiff testified to this.	
252. After talking to the Magistrate Judge, the detectives brought Mr. Villegas back to the Juvenile Investigative Section	Undisputed that Plaintiff testified to this.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Division and handcuffed him to a chair. Ex. 77 at 39:21-40:9 (Villegas 9.15.11 testimony).		
253. Mr. Villegas told Marquez a false story; that Williams was going to do something crazy. In response, Marquez got really angry, and slapped Mr. Villegas in the back of the head. Ex. 77 at 40:2-41:5 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything. Undisputed that Plaintiff testified to this	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
254. Mr. Villegas agreed to falsely implicate Rodney Williams as a result of the abuse. Ex. 75 at 228:1-19 (Villegas 12.1.94 testimony).	Undisputed that Plaintiff testified to this	
255. In response, Defendant Marquez slapped Mr. Villegas “real hard,” and told him that he was the one who committed the murders. Ex. 75 at 228:19-229:13(Villegas 12.1.94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
256. Defendant Marquez wrote up Plaintiff’s initial statement implicating Williams, but then crumpled it up and threw it away. Ex. 75 at 248:1-249:23(Villegas 12.1.94 testimony).	Undisputed that Plaintiff testified to this	
257. When Marquez was slapping Plaintiff again, Defendant Arbogast then called Defendant Marquez out of the interrogation room, and they left Mr. Villegas alone in the interrogation room. Ex. 77 at 45:18-46:5 (Villegas 9.15.11 testimony).	Undisputed that Plaintiff testified to this. Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
258. Then Defendant Marquez returned, saying he had Gonzalez's statement. Ex. 77 at 45:18-46:5 (Villegas 9.15.11 testimony).	Undisputed.	
259. Defendant Marquez threatened Mr. Villegas that he would get the death penalty via the electric chair, and that Defendant Marquez would flip the switch himself. Ex. 77 at 40:17-41:5. (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
260. Mr. Villegas told Defendant Marquez he committed the murders with a shotgun. Ex. 77 at 43:11-21 (Villegas 9.15.11 testimony).	Disputed. Plaintiff never mentioned a shotgun.	Attachment 2-A, Marquez Depo, 158:15-21
261. Defendant Marquez responded by telling Mr. Villegas that he was lying, slapping him on the back of the head, and repeating the threats about taking him into the desert and beating him. Ex. 77 at 43:16-21 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
262. Mr. Villegas confessed because he was afraid of the threats made to him during his interrogation. Ex. 77 at 48:3-25 (Villegas 9.15.11 testimony).	Undisputed that Villegas testified to this.	
263. The detectives told Mr. Villegas if he didn't cooperate until the end they would beat him. Ex. 75 at 230:14-17 (Villegas 12/1/94 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
264. When it came time to sign the false confession in front of the magistrate judge, Defendant Marquez told Mr. Villegas that if he screwed up, they would take him to the desert and beat him, and take him to the County Jail. Ex. 77 at 49:9-50:3 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
265. But if Mr. Villegas did as he was directed, Defendant Marquez promised him that he would take him to the juvenile detention center, and nothing bad would happen to him. Ex. 77 at 49:9-50:3 (Villegas 9.15.11 testimony).	Disputed. Marquez did not call Plaintiff names, beat him, threaten him, or accuse him of anything.	Attachment 2-A, Marquez Depo, 207:24-210:21; 207:24-208:2; 210:13-21
266. The next day after Mr. Villegas falsely confessed, he told his probation officer that he was innocent and that Defendant Marquez had made him sign the confession. Ex. 77 at 52:8-12 (Villegas 9.15.11 testimony).	Disputed. Plaintiff told Sotello that he was tired and wanted to go back to sleep so I told them what they wanted to hear.	Attachment 2-E [Villegas J.S. 03764-3766
267. Around midnight on April 10, 1993, Robert England, Armando Lazo, Jesse Hernandez and Juan Medina left a party and were on Jamaica Street, and were walking together along Transmountain Drive in El Paso. Ex. 84, at 4:13-5:1, 6:3-7:8, 8:1-9:17 (December 7, 1994 Medina testimony).	Undisputed.	
268. While they were walking on Electric Street, a vehicle approached them. Ex. 85 (February 16, 2009 Hernandez affidavit); Ex. 86	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
(May 14, 2009 Medina affidavit).		
269. England and Lazo walked toward the vehicle and multiple shots were fired from the passenger side of the vehicle. Ex. 84 at 14:14-15:25 (December 7, 1994 Medina testimony); Ex. 85 (February 16, 2009 Hernandez affidavit).	Undisputed.	
270. England was shot and killed. Ex. 87 (Bellows police report).	Undisputed.	
271. Lazo was also shot, but made his way to the front door of a neighborhood home, where he collapsed and eventually died. Ex. 88 at 170:9-71:12 (Gorham 8.21.95 testimony).	Undisputed.	
272. Hernandez and Medina were not shot and ran northward toward the Blockbuster video on Fairbanks Street. Ex. 89 at 39:24-40:18 (December 7, 1994 Hernandez testimony).	Undisputed.	
273. Hernandez was 17 years old at the time. Ex. 90 (Hernandez Statement 4.10.93).	Undisputed.	
274. Defendants Marquez and Arbogast reported that they brought Hernandez and Medina to the Crimes Against Persons (CAP) office and took their statements on April 10, 1993. Ex. 22 at 248:7-16 (Earl Arbogast deposition); Ex. 90 (April 10, 1993 Hernandez	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
statement); Ex. 91 (April 10, 1993 Medina statement).		
275. Defendant Marquez brought Hernandez back into the CAP office for a second interrogation. Ex. 92 at 52:10-11, 53:3-10 (June 22, 2011 Hernandez testimony).	Undisputed.	
276. Defendant Marquez took Hernandez into a room with a mirror, and told him to describe the shooting again in writing on a yellow legal pad. After Hernandez wrote what happened on the pad, Marquez took the pad and tossed it back at Hernandez. Ex. 92 at 53:17-54:22 (June 22, 2011 Hernandez testimony).	Undisputed.	
277. Defendant Marquez told him to “cut the bullshit..[y]ou know I know you did it.” Defendant Marquez falsely told Hernandez that “Juan [Medina] is saying you did it.” Id. Defendant Marquez told Hernandez to “just confess” or he was “going to jail” and would “get the death penalty.” Ex. 92 at 53:17-54:22 (June 22, 2011 Hernandez testimony).	Undisputed that Hernandez testified to this.	
278. Hernandez began to believe he was somehow guilty of the murder. He put his head down and cried. Ex. 92, at 53:22-55:11 (June 22, 2011 Hernandez testimony).	Undisputed that Hernandez testified to this.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
279. Nearly 30 years afterwards, Hernandez would still have nightmares about Defendant Marquez and the interrogation. Ex. 92, at 53:22-55:11 (June 22, 2011 Hernandez testimony).	Undisputed that Hernandez testified to this.	
280. On April 15, 1993, according to Defendant Marquez, he took a statement from a high school student, Robert Hall, who stated that 15 year old Michael Johnston had admitted to committing the Lazo/England murder. Ex. 81 (Arbogast report) (DEF CITY 266); Ex. 82 (Robert Hall Statement) (DA 34-625-629). Ex. 30 at 100:12-102:2 (Marquez deposition); Ex. 83 at 596:19-20 (Johnston 12.9.94 testimony).	Undisputed.	
281. On the night of April 15, 1993, Defendants Marquez, Arbogast, Ortega, and Graves traveled across the border to New Mexico, where Johnston resided, to bring him into custody. Ex. 22, at 253:2-20 (Earl Arbogast deposition); Ex. 70, at 77:17-78:3 (Brown deposition); Ex. 31, at 142:24-143:24 (Graves deposition).	Undisputed.	
282. Defendant Ortega reported that Jauregui was taken into custody at 7 p.m., and Johnston was taken into custody at 7:19pm. Johnston was physically grabbed, handcuffed, informed he was under arrest for murder,	Disputed, Johnston was taken into custody at 2119 hrs	See Plaintiff's exhibit 99

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
handcuffed him, and placed into a police car. Ex. 83, at 596:21-97:18 (Johnston Testimony dated 12/9/1994). Ex. 99, Ortega Report.		
283. Johnston's mother, Barbara Hoover, told the police not to question her son until he had an attorney. Johnston's mother was not present for his interrogation. Johnston also asked for a lawyer, but they continued questioning him regardless. Ex. 93, at 615 (Barbara Hoover Affidavit), Ex. 95, at 585:14-587:7 (December 9, 1994 Hoover testimony), Ex. 83, at 615:8-11 (Johnston 12.9.94 testimony).	Undisputed that these witnesses testified in this manner	
284. Defendants Marquez, Arbogast, Ortega, and Graves took Johnston to the Chaparral police station, and discussed what they wanted to do with the boys. Ex. 83, at 604:5-24. (Johnston Testimony dated 12/9/1994).	Undisputed that Johnson testified in this manner.	
285. Johnston was threatened that, if he did not travel with them back to El Paso, he would be sent to jail in New Mexico. Ex. 83, at 616:5-21 (Johnston 12.9.94 testimony).	Undisputed that Johnson testified in this manner.	
286. At approximately 9:10 p.m., after Johnston had been detained for about two hours, Defendants Marquez, Arbogast, Ortega, and Graves brought him across state lines to Texas.	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 83, at 605:6-7 (Johnston 12.9.94 testimony); Ex. 103, at 389:8-10 (Ortega 12.8.94 testimony).		
287. At approximately 11:19pm, Marquez, Arbogast, Ortega, and Graves “proceed[ed] to take [Johnston’s] written statements.” Ex. 99 (Ortega report at 11:19pm); Ex. 30 at 109:2-5 (Marquez dep).	Disputed, the Juveniles were taken before the Magistrate at 2230 hrs. Disputed Johnson never gave a written statement	Plaintiff’s Ex. 99 Attachment 2-D, Villegas J.S. 030406-030420 .pdf p. 10]
288. Johnston was questioned about the murder before he was brought before a Magistrate Judge or a juvenile probation officer. Ex. 83 at 606:7-16 (Johnston 12/9/94 testimony).	Disputed. Saw intake officer at 2145 hrs and Johnston said he wanted to give a written statement. 2230 taken before Magistrate for warnings there returned to YSD to give written statements	Plaintiff’s Ex. 99
289. The detectives handcuffed Johnston and screamed in his face, telling him that he committed the crime. Ex. 83 at 600:6-13 (Johnston 12/9/94 testimony).	Undisputed that he testified.	
290. The detectives spit as they yelled in Johnston’s face. Because Johnston was handcuffed, he was not free to wipe his face. Johnston was frightened. Ex. 83 at 600:14-24 (Johnston 12/9/94 testimony).	Undisputed that he testified.	
291. Johnston explained to them that he did not commit the murders. The detectives told him that if he told them he did it, they would let him off easy. But, if he did not admit his guilt, he would get	Undisputed that he testified.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
the electric chair and they would pull the switch themselves. Ex. 83, at 600:6-10, 609:19-610:3 (Johnston 12/9/94 testimony).		
292. The detectives threatened to take Johnston to jail where he would be beaten and sexually assaulted. Ex. 83, at 598:20-599:4 (Johnston 12/9/94 testimony).	Undisputed that he testified.	
293. Finally, after hours of interrogation and in fear for his life, Johnston admitted to committing the murders. Ex. 83 (Johnston Testimony, first criminal trial, 609:19-610:3; Ex. 30 at 125 (Marquez deposition).	Disputed. J Johnston never gave a written statement— "Johnston gave five different versions of what occurred, and each one was different from the other. It was determined that both of them were not involved in the case"	Attachment 2-D, Villegas J.S. 030406-030420 .pdf p. 10]
294. Defendant Marquez cleared Johnston from being a suspect in the murder. Ex. 30 at 125:1-23 (Marquez deposition).	Undisputed.	
295. Johnston arrived home the following day on April 16, 1993, at approximately 3 a.m., after being in police custody for eight hours. Ex. 93 (Barbara Hoover Affidavit); Ex. 95, at 583:21-584:9 (Hoover 12/9/94 testimony).	Undisputed.	
296. Johnston's wrists were red and had bruises from the handcuffs. Ex. 95, at 587:8-12. (Hoover 12/9/94 testimony).	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
297. Johnston remained traumatized for months. Whenever Johnston heard a siren, he would go into his closet and hide. Ex. 93 (Barbara Hoover Affidavit); Ex. 95, at 587:11-15 (Hoover 12/9/94 testimony).	Undisputed.	
298. Defendant Marquez directed Defendant Graves to pick up Rodney Williams. Ex. 30 at 160:15-62:1 (Marquez deposition).	Disputed.	Attachment 2-B, Earl Arbogast Depo, 168:5-1
299. Marquez has no explanation for why they decided to pick up Williams. Ex. 30 at 168:6-17 (Marquez deposition).	Disputed, Marquez could not remember	Attachment 2-A, Marquez Depo 168:6-17
300. Marquez never documented how Williams came to his attention, or why he directed Defendant Graves to question Williams. Ex. 30 at 170:22-71:20 (Marquez deposition).	Disputed.	Attachment 2-B, Earl Arbogast Depo 168:5-11
301. Under accepted police practices, Defendants should have documented how Williams came to their attention during the investigation, and why they decided to question him. Ex. 6 at 32 (Allio report).	Disputed. This is merely an expert opinion and speculation. “Without more than credentials and a subjective opinion, an expert's testimony that “it is so” is not admissible” and therefore cannot serve as an undisputed fact. <i>Viterbo v. Dow Chem. Co.</i> , 826 F.2d 420, 424 (5th Cir. 1987). Further disputed opinions exist in the City’s expert report.	
302. On April 21, 1993, Defendants Graves and Arbogast took 15 year old Williams into custody.	Undisputed.	

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 31 at 103:7-04:19 (Graves deposition); Ex. 95 (Williams arrest report).		
303. At the time, Defendants Graves and Arbogast were both assigned to the Crimes Against Persons division of the Criminal Investigations Bureau. Ex. 31 at 21:6-22:9 (Graves deposition); Ex. 22 at 24:12-25:1; 121:5-7 (Earl Arbogast deposition).	Undisputed.	
304. Neither Defendant Graves nor Defendant Arbogast read Williams his Miranda rights or interrogated him at the juvenile division. Ex. 80 at 11:6-12:25 (Williams' 6/23/11 testimony); Ex. 96 at 482:13-492:9 (Graves 12/9/94 testimony).	Undisputed.	
305. Instead, Defendant Graves took Williams to the CAP Office. Ex. 80 at 12:10-20 (Williams' 6/23/11 testimony).	Undisputed.	
306. Although 15 year old Williams should have been questioned by a juvenile officer and brought to a magistrate before being questioned, Defendant Graves never involved a juvenile officer or a magistrate judge. Ex. 31 at 107:16-22 (Graves deposition).	Disputed, Graves did not believe that Williams was a witness and not a suspect. Therefore, it was not necessary to take him before a juvenile officer or magistrate judge	Attachment 2-C, Graves Depo, 107:11-14; 109:12-112:23
307. Williams asked the detectives for his mother, but was not allowed to speak with her.	Disputed	Attachment 2-C, Graves Depo, 106:19-107:10

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 80 at 14:19-15:7 (Williams 6/23/11 testimony).		
308. Graves and Arbogast questioned Williams. Ex. 31 at 105:6-25 (Graves deposition).	Undisputed.	
309. Williams informed Graves that he was innocent of the murders, and that he was at his home with Villegas and Gonzalez on the night of the murders. In response, Graves told him that Williams's account wasn't the correct story. Ex. 80 at 19:16-20:11 (Williams 6/3/2011 testimony).	Disputed.	Attachment 2-C, Graves Depo, 105:23-111:13
310. Defendant Graves told Williams that he could go home once he provided them with a statement. Ex. 94, at 251:17-22 (December 8, 1994 Williams testimony).	Disputed.	Attachment 2-C, Graves Depo, 105:23-111:13
311. Defendant Graves threatened Williams that, if he didn't say certain things in the statement, he would be charged with the crime and would get "fucked in the ass" by other inmates in prison. Ex. 80 at 17:7-24 (June 3, 2011 Williams testimony).	Disputed.	Attachment 2-C, Graves Depo, 105:23-111:13
312. Graves threatened Williams that he was not going to be able to pass gas because his "[asshole] was going to be too loose" ; Graves also told Williams they wouldn't let him go until he gave a statement.	Disputed.	Attachment 2-C, Graves Depo, 105:23-111:13

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 94 at 251:7-10 (December 8, 1994 Williams testimony).		
313. Defendant Graves then typed a statement for Williams, and made up the facts included in that statement. Ex. 94 at 217:2-222:1; 226:15-235:17 (December 8, 1994 Williams testimony); Ex. 97 at 356:11-14 (August 22, 1995 Williams testimony).	Disputed.	Attachment 2-C, Graves Depo, 105:23-111:13
314. Detective Graves told Williams to name Lujan and Ramirez in his statement. Ex. 80 at 23:1-5 (June 3, 2011 Williams testimony).	Disputed.	Attachment 2-C, Graves Depo, 105:23-111:13; 161:9-162:9
315. Graves has no explanation for how Williams supposedly named Lujan and Ramirez as co-offenders in the murders when they could not have been present for the murders. Ex. 31 at 164:11-20 (Graves deposition).	Disputed, Graves testified that he did not remember asking	Attachment 2-C, Graves Depo, 161:9-162:9; 164:11-20; 175:16-176:19; 184:12-185:8
316. Williams was at the CAP office for approximately nine hours, between 5:30 p.m. on April 21, 1993 until 2:30 a.m. until April 22, 1993. Ex. 94 at 250:15-24 (Williams 12/8/94 testimony).	Disputed.	Attachment 2-C, Graves Depo, 116:1-118:10
317. After writing the statement, Graves provided the statement to Defendant Marquez and discussed it with him.	Disputed, Graves testified that he did not remember who he might have given the statement to or discussed it with	Attachment 2-C, Graves Depo, 113:1-11

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 31 at 113:1-11 (Graves deposition).		
318. On April 21, 1993, at approximately 10 p.m., Defendants Marquez, Arbogast, and Graves went to Villegas's home and arrested 17-year old Marcos Gonzalez. Ex. 77 at 28:4-22 (Villegas 9/15/11 testimony); Ex. 31 at 147:7-11, 151:11-14 (Graves deposition).	Undisputed.	
319. Mr. Villegas was placed in a car with Defendants Marquez and Arbogast, and Gonzalez was placed in a car with Defendant Graves. Ex. 77 at 29:6-16 (Villegas 9/15/11 testimony); Ex. 31 at 151:11-14 (Graves deposition).	Undisputed.	
320. Defendant Graves then drove Gonzalez to the CAP office. Marquez took notes and spoke to Gonzalez. Ex. 31 at 154:15-155:4 (Graves deposition), Ex. 30 at 126:5-22 (Marquez deposition)	Undisputed.	
321. Defendant Graves proceeded to interrogate Gonzalez. Ex. 31 at 171:3-9 (Graves deposition)	Undisputed.	
322. Gonzalez told Defendant Graves that he was not involved in the Electric Street shooting and wasn't in any car. Ex. 98 at 416:6-15 (August 22-23, 1995 Gonzalez testimony); Ex. 31, at 169:5-7 (Graves deposition).	Disputed.	Attachment 2-C, Graves Depo, 157 :1-158 :8

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
323. Defendant Graves forced him to write a statement at approximately 12:45 a.m. on April 22, 1993. However, Graves was not satisfied with Gonzalez's first statement because it did not inculcate him in the Electric Street shooting. Ex. 98 at 411:9-412:2 (August 22-23, 1995 Gonzalez Testimony), Ex. 74 (Marcos Gonzalez first statement); Ex. 100 at 447:10-20 (December 8, 1994 Gonzalez testimony) Ex. 74 (Marcos Gonzalez first statement).	Disputed.	Attachment 2-C, Graves Depo, 157 :158 :8 ; 158 :20-25 ; 161 :2-164 :7 ; 167 :24-170 :15
324. Graves continued to communicate with Defendants Marquez, Arbogast, and Ortega, who were contemporaneously interrogating Mr. Villegas through telephone calls. Ex. 22 at 214:10-216:12 (Earl Arbogast deposition); Ex. 31, at 166:17-167:21 (Graves deposition).	Undisputed.	
325. Defendant Graves wasn't satisfied with Gonzalez's truthful statement that he was not involved in the murders, and wanted Gonzalez to admit to being in the car at the time of the shooting. Ex. 31 at 169:5-170:15 (Graves deposition); Ex. 101 at 145:17-24 (Gonzalez 12/1/94 testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
326. Defendant Graves told Gonzalez that Mr. Villegas and Gonzalez said that Gonzalez was in the car that night, but they just wanted Mr. Villegas because they believed he was the shooter. Gonzalez maintained that he, Mr. Villegas, and Williams had nothing to do with the murders. Ex. 98 at 426:1-427:7 (Gonzalez 8/22/95-8/23/1995 Testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
327. Defendant Graves pushed Gonzalez against a wall and made Gonzalez change his statement. Ex. 101 at 147:12-25; 148:23-49:5 (December 1, 1994 Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
328. Defendant Graves told Gonzalez that he was a fucking liar, and he knew Gonzalez committed the crimes. Ex. 101 at 146:11-147:1; 148:23-49:7 (December 1, 1994 Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
329. Defendant Graves banged Gonzalez's head against the wall multiple times. Ex. 101 at 149:3-7 (December 1, 1994 Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
330. Defendant Graves told Gonzalez that he would be charged with capital murder and the penalty would be lethal injection. Ex. 98 at 435:15-21 (August 22-23, 1995 Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
331. Defendant Graves told Gonzalez that he was going to be fucked by the other inmates in jail. Ex. 101 at 164:2-7 (December 1, 1994 Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
332. Defendant Graves threatened that he would beat Gonzalez up and that he would be “screwed by fat, old men” at the county jail. Ex. 100 at 446:22-24 (December 8, 1994, Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
333. Gonzalez was abused for approximately two hours. Ex. 101 at 147:12-25 (December 1, 1994 Gonzalez testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
334. Defendant Graves forced Gonzalez to provide a story that implicated himself and the other juveniles. Ex. 100 at 419:23-420:24; 430:8-433-14 (Gonzalez 12/8/94 testimony).	Disputed.	Attachment 2-C, Graves Depo, 161:9-162:9; 164 :11-20; 175 :16-176:19
335. Gonzalez was afraid they were not going to let him go and was frightened about going to jail. He thought he might as well tell them what they wanted to hear because he felt forced to give a statement Ex. 98 at 426:21-428:1 (August 22-23 Gonzalez testimony).	Undisputed that Gonzales testified to this.	
336. Defendant Graves has no explanation for how Gonzalez’s confession could be truthful, if it named Lujan and Ramirez as co-offenders, when they could not have participated in the shootings.	Disputed, Graves did not remember if he asked about Lujan and Ramirez not being in the car.	Attachment 2-C, Graves Depo, 161:9-162:9; 164:11-20; 175:16-176:19

<u>PROPOSED UNDISPUTED FACTS</u>	<u>UNDISPUTED or DISPUTED</u>	<u>CONTROVERTING EVIDENCE (if disputed)</u>
Ex. 31 at 164:16-20 (Graves deposition).		
337. Defendant Graves completed Gonzalez's inculpatory second statement on April 22, 1993, at approximately 2:30 a.m. Ex. 102 (Gonzalez second statement).	Undisputed.	

ATTACHMENT 2-A



KENTUCKIANA
— COURT REPORTERS —

CASE NO. 3:15-CV-386

DANIEL VILLEGAS

VS

CITY OF EL PASO, ET AL.

DEPONENT:

ALFONSO MARQUEZ

DATE:

May 10, 2022



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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS, EL PASO DIVISION

DANIEL VILLEGAS,)	
)	
Plaintiff	)	Case No. 3:15-CV-386
)	
VS.	)	Hon. David C. Guaderrama,
	)	District Judge
)	
CITY OF EL PASO,)	
ET AL.,	)	Hon. Leon Schydlower,
	)	Magistrate Judge
)	
Defendants	)	JURY TRIAL DEMANDED

ORAL AND VIDEOTAPED ZOOM DEPOSITION OF

ALFONSO MARQUEZ

MAY 10, 2022

Volume 1 of 1

ORAL AND VIDEOTAPED ZOOM DEPOSITION OF ALFONSO

MARQUEZ, produced as a witness at the instance of the
PLAINTIFF and duly sworn, was taken in the above-styled
and numbered cause on the 10th day of May, 2022, from
9:49 a.m. to 7:07 p.m., before ASHLEY ELIZONDO, CSR No.
9465 for the State of Texas, reported by machine
shorthand, in El Paso County, Texas, pursuant to the
Texas Rules of Civil Procedure and the provisions stated
on the record or attached hereto.

Job No. 5225808

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Carlos Ortega Defendant
Christy Burke
Krystal Barnes Videographer

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13

14 REQUESTED DOCUMENTS/INFORMATION

15	NO.	DESCRIPTION	PAGE
16		NONE	

17

18 CERTIFIED QUESTIONS

19 NONE

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23

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25

1 REPORTERS NOTE: Please note this deposition was taken
2 via Zoom; therefore, due to the poor quality of the Zoom
3 videoconference, audio distortions, internet connections
4 freezing, extraneous room noise, et cetera,
5 unintelligent, indiscernible, or inaudibles may have
6 created inaccuracies in the transcription.

7 THE VIDEOGRAPHER: My name is Krystal Barnes.
8 I'm the online video technician, and Ashley Elizondo is
9 the court reporter today representing Kentuckiana Court
10 Reporters located at 730 West Main Street, Suite 1010,
11 Louisville, Kentucky 40202. Today is the 10th day of
12 May, 2022, and the time is 9:49 a.m. We are convened by
13 video conference to take the deposition of Alfonso
14 Marquez in the matter of Daniel Villegas versus The City
15 of El -- of El Paso, et al, pending in the United States
16 District Court for the Western District of Texas, El
17 Paso Division. Case Number 3:15-CV-386.

18 Will everyone but the witness please state your
19 appearance, how you are attending, and the location you
20 are attending from starting with the plaintiff's
21 counsel.

22 MR. AINSWORTH: This is Russell Ainsworth
23 appearing from Chicago, Illinois.

24 MR. RALLINS: Quinn Rallins appearing from
25 Chicago, Illinois.

The Deposition of ALFONSO MARQUEZ, taken on May 19, 2022

1 MR. ALMANZAN: This Andy Almanzan. I'm
2 appearing on behalf of Defendant, Carlos Ortega, in El
3 Paso, Texas, at my law office. Also in attendance and
4 observing is my client, Carlos Ortega, here in El Paso
5 in my office as well.

6 MR. TSCHIRHART: Scott Tschirhart representing
7 the City of El Paso appearing from San Antonio, Texas.

8 MR. MARTINEZ: This is Jim Martinez here in --
9 at 100 North Stanton in El Paso, Texas. I represent Al
10 Marquez.

11 MR. BRITTAIN: Eric Brittain on behalf of
12 defendant, Kemmitt Bellows. I am in my office appearing
13 via Zoom in El Paso, Texas.

14 MR. JEEP DARNELL: This is Jeep Darnell on
15 behalf of our clients, Earl Arbogast, Scott Graves,
16 Hector Loya, and Ray Sanchez, and I'm at my office in El
17 Paso, Texas.

18 MR. JIM DARNELL: This is Jim Darnell
19 representing the same people as Jeep. I'm appearing
20 from El Paso.

21 MR. ESTRADA: Cris Estrada also with the
22 Darnell firm representing the same defendants. We're in
23 our office in El Paso, Texas.

24 THE VIDEOGRAPHER: Okay. Mr. Marquez, would
25 you please state your full name for the record?

1 THE WITNESS: Alfonso Marquez.

2 THE VIDEOGRAPHER: All right. And all parties
3 agree that the witness is, in fact, Alfonso Marquez?

4 MR. AINSWORTH: Yes. On behalf of the
5 plaintiff, we do.

6 MR. MARTINEZ: Yes.

7 THE VIDEOGRAPHER: Perfect. Sir, can you
8 please raise your right hand so that the court reporter
9 can swear you in?

10 THE REPORTER: Sir, do you solemnly swear to
11 tell the truth, the whole truth, and nothing but the
12 truth?

13 THE WITNESS: I do.

14 ALFONSO MARQUEZ,
15 having been first duly sworn was examined and testified
16 as follows:

17 EXAMINATION

18 BY MR. AINSWORTH:

19 Q All right. Sir, would you please state and
20 spell your name for the record?

21 A Sorry. You broke up.

22 Q Would you please state and spell your name for
23 the record?

24 A Alfonso Marquez.

25 Q And can you spell your name?

1 A A-L-F-O-N-S-O, M-A-R-Q-U-E-Z.

2 Q Can you hear me okay?

3 A You -- you break very often.

4 Q Is everyone else having the same problem?

5 MR. JEEP DARNELL: No.

6 MR. TSCHIRHART: I hear you just fine, Russell.

7 Q Well, Mr. Marquez, if you have a problem
8 understanding any of my questions, whether it's
9 technical or because you can't understand what I'm
10 saying, please let me know. Okay?

11 A Yes, sir.

12 Q And I'll try and do my best to rephrase the
13 question or reask it. Okay?

14 A Yes, sir.

15 Q Have you been deposed before?

16 A Yes.

17 Q On how many occasions?

18 A Once.

19 Q When was that?

20 A I do not recall, but I was working for the
21 county.

22 Q Okay. So it was some time ago?

23 A I'm going to say about '97, '98.

24 Q All right. Because it's been a long time, I'm
25 just going to go over some of the ground rules of the

1 deposition. Is that okay?

2 A Yes, sir.

3 Q The first thing I ask you to do, just like you
4 do when you're in court, just answer the questions out
5 loud with a yes or a no if the question calls for it.
6 Okay?

7 A Yes, sir.

8 Q The second thing I'm going to you to do is to
9 wait until I'm done asking my question before you begin
10 your answer. Okay?

11 A Yes.

12 Q And I'll try and do the same for you. That is
13 to wait until your answer is finished before I start
14 asking my next question, so we don't make life difficult
15 for our court reporter. Okay?

16 A Yes.

17 Q And as I said before, if you don't understand
18 my question, please ask me to phrase the question, reask
19 the question, or in some way indicate to me that you
20 don't understand my question. Okay?

21 A Yes.

22 Q The flip side of that is that if you answer my
23 question, I'll assume that you've understood my question
24 as I posed it, fair?

25 A Fair.

1 Q Are you on any medication or do you have any
2 medical condition that would affect your ability to
3 testify truthfully and accurately here today?

4 A No.

5 Q You know, apart from the natural aging process,
6 do you believe you have any issues with your memory?

7 A Sometimes I forget something and then I
8 remember it later on when I -- where I left it.

9 Q All right. Has that -- has that been the same
10 your whole life, or is that a more recent phenomenon?

11 A More recent.

12 Q Okay. Have you ever seen a doctor for that
13 issue?

14 A No.

15 Q Has a doctor or medical professional ever told
16 you there is an issue with your memory?

17 A No.

18 Q Has anyone else told you that you have a
19 problem with your memory?

20 A No.

21 Q Do you believe the, you know, experience that
22 you're describing of, you know, forgetting and then
23 remembering something, do you believe that your memory
24 is worse than other people of the same age?

25 A I can't answer that. I just forget some things

1 and then I remember some things.

2 Q Okay. But, you know, this is something that
3 happens to a lot of people. A lot of people forget
4 something and then remember it, right?

5 A Correct.

6 Q And so I'm just trying to wonder if it's your
7 sense that this happens to you more often than other
8 people that you know?

9 A No. I can't answer that. No.

10 Q How often does it happen to you that you can't
11 remember something but then remember it at a later
12 point?

13 A I can only answer back -- I just can't -- for
14 example, if I leave my glasses on the table and then I'm
15 trying to figure out where I left the glasses. That's
16 what I'm talking about.

17 Q Got it. Okay. So some issues with your
18 short-term memory; is that right?

19 A Correct.

20 Q All right. Have you had any issues with your
21 long term memory that you know of?

22 A I would say. Yes.

23 Q All right. What issues have you had with your
24 long term memory?

25 A I haven't seen something. Can't recall what I

1 did 25, 30 years ago.

2 Q Okay. And that's common for people in, you
3 know, based on your experience in life and in your
4 professions, that sometimes it's hard to remember things
5 that happened 25 to 30 years ago, right?

6 A Yes.

7 Q Do you have a belief that your long-term memory
8 is better or worse than other people of your age?

9 A I don't know, sir.

10 Q Okay. Nobody has ever told you that your
11 long-term memory is worse than other people; is that
12 right?

13 A Correct.

14 Q And you've never believed that your long
15 term-memory was worse than other people; is that
16 correct?

17 A I don't know.

18 Q You don't know. But you've never had that
19 belief, right?

20 A I've never had the belief that -- no, sir. No.

21 Q Okay. What did you do to prepare for your
22 deposition?

23 A I read transcripts and the document they given
24 to me.

25 Q All right. Well, in this case, there is a lot

1 of transcripts and there is a lot of documents. So can
2 you tell me what transcripts you reviewed?

3 A The first trial, second trial, writ, motion to
4 suppress, my statements, my presentation supplement.

5 Q All right. I just wanted to stick with the
6 transcripts for just this minute. Did you read -- at
7 the first trial, you testified in two occasions; is that
8 right?

9 A I don't recall.

10 Q Okay. And did you review one transcript from
11 your first trial testimony or two trial -- two
12 transcripts from that first trial testimony on two
13 separate dates?

14 A One -- one transcript.

15 Q Okay. And then what about from the written
16 hearing? You testified on three separate days. Did you
17 review the transcripts from each of those dates or just
18 from the -- the first day?

19 A The three days of [inaudible].

20 Q Okay.

21 THE REPORTER: Can you speak up, Mr. Marquez?

22 A Yes. Sorry.

23 Q All right. And did you review any transcripts
24 of anybody else's testimony in preparation for this
25 deposition?

1 A No.

2 Q How many times did you review your transcripts?
3 Your previous transcripts?

4 A I would say about four times.

5 Q All right. And did you read each of them about
6 four times?

7 A Yes.

8 Q What was the last time you read them?

9 A I believe the day before yesterday.

10 Q And when did you start reading them to prepare
11 for this deposition?

12 A I don't recall the date I received the
13 transcripts.

14 Q Can you recall approximately how much time?
15 Was it a few weeks ago? A month ago? Longer?

16 A I would say between a month to about three
17 weeks. Something like that.

18 Q Okay. Did you listen to any audio recordings
19 or video recordings in preparation for your deposition?

20 A Only -- I would say yes.

21 Q Which ones did you review?

22 A So yesterday when I -- y'all were interviewing
23 detective -- the other detective. That's the only thing
24 I viewed videos of.

25 Q Okay. So you -- you viewed the Zoom deposition

1 of --

2 A Correct.

3 Q -- Defendant Loya yesterday?

4 A Correct.

5 Q Did you review any other audio or video
6 recordings?

7 A No.

8 Q Did you view any photographs in preparation for
9 your deposition?

10 A I would say yes.

11 Q What photographs did you review?

12 A Of myself.

13 Q Was it a photograph of yourself with some other
14 officers --

15 A No --

16 (Simultaneous speakers)

17 Q -- At a conference table?

18 A No. It was reference material that I had been
19 given to -- to look at.

20 Q Okay. What was the -- the -- what did the
21 photograph depict that you reviewed?

22 A Myself.

23 Q Just you?

24 A Yes, sir.

25 Q All right. Do you know when that photograph

1 was taken approximately?

2 A No. I don't recall when it was taken.

3 Q Did you review any other photographs other than
4 the photograph of yourself?

5 A No.

6 Q Okay.

7 A If I can rephrase that, I did see photographs
8 of what I would say a subject in one case.

9 Q And what do those photographs that you -- that
10 you viewed depict?

11 A Photographs of alleged injuries.

12 Q Alleged injuries to whom?

13 A I believe his name was a Angel Rivera.

14 Q Could you spell that?

15 A I think it's A-N-G-E-L, R-I-V-E-R-A.

16 Q Thank you. Did you view any other photographs
17 in preparation for this deposition?

18 A No.

19 Q And you mentioned you reviewed some police
20 reports; is that right?

21 A Correct.

22 Q You viewed your presentation supplement --
23 supplemental report, right?

24 A Yes.

25 Q What other police reports did you review?

1 A Statements that I had taken.

2 Q From whom?

3 A I believe Jesse Hernandez, and I really cannot
4 recall the other statements that I took. One was Jesse
5 Hernandez.

6 Q Approximately how many statements did you
7 review?

8 A That I reviewed, I would say mine that I have
9 seen was other statements taken by other detectives, but
10 that was jury trial.

11 Q Did you review any police reports filled out by
12 other people?

13 A For this hearing, no.

14 Q Did you review police reports for a different
15 hearing?

16 A For -- the only one that I reviewed was one
17 they represented in, let's say, the Writ or the trial,
18 but for this one, no. I didn't get anybody else's.

19 Q I see. Okay. So you didn't read any police
20 reports offered by Ear Arbogast or Scott Graves or any
21 --

22 (Simultaneous speakers)

23 A No. I did not.

24 MR. MARTINEZ: And he didn't -- I'm sorry,
25 Russ. I know it's hard on video and -- and Russell kind

1 of trails on at the end and part of it's because his
2 voice is digitized, but if you start talking before he
3 stops -- if you start talking before he has finished his
4 question, the court reporter is not going to -- she
5 can't type two at once, so let him finish his question.

6 Q I appreciate that and I'll try to do the same
7 for you.

8 Approximately how many reports and statements
9 all told -- all took did you review?

10 A I don't know, sir.

11 Q Was it more than a dozen?

12 A Probably. I don't know.

13 Q Was there anything that you wanted to review in
14 preparation for your deposition but were unable to
15 review?

16 A No.

17 Q Did you have adequate time in your mind to
18 review the police reports that you reviewed?

19 A That I took? Yes.

20 Q And was there anything that you wanted to do to
21 prepare for this deposition but did not do?

22 A No.

23 Q Do you feel like you're prepared to answer
24 questions at this deposition?

25 A Yes.

1 Q Did you meet with anyone in preparation for
2 this deposition?

3 A My attorney.

4 Q All right. I don't want to hear what your --
5 you and your attorney talked about. Okay? But I just
6 want to know when you met and for how long. All right?

7 A I don't recall when we met, and I don't recall
8 the length of time.

9 Q All right. On how many occasions --

10 (Simultaneous speakers)

11 Q Sorry. Continue.

12 A Go ahead.

13 Q On how many occasion did you meet with your
14 lawyer?

15 A I would say about -- at least four or five
16 times.

17 Q When was the most recent time that you met with
18 your lawyer?

19 A Yesterday.

20 Q And how long did you meet with your lawyer
21 yesterday?

22 A About 40, 30 minutes.

23 Q Was that in person?

24 A Yes.

25 Q When you met with your lawyer -- and was that

1 Jim Martinez?

2 A Yes.

3 Q Was anyone else present at any of the meetings
4 other than you and your lawyer, Jim Martinez?

5 A No.

6 Q Did you talk with any of the other defendants
7 to this lawsuit in the past two months?

8 A No.

9 Q What was the time that you met with your lawyer
10 before yesterday?

11 A I believe it was Friday. The Friday before
12 this.

13 Q And how long did you meet with your lawyer on
14 Friday?

15 A I'd say probably an hour or so.

16 Q And before Friday, when was the time before
17 that that you met with your lawyer?

18 A I don't recall, sir.

19 Q Well, how many -- how long do you meet with
20 your lawyer in the time before that?

21 A I don't recall, sir.

22 Q Was it more or less than an hour?

23 A Say again.

24 Q Was it more or less than an hour?

25 A I would say about an hour.

1 Q Why would you say that?

2 A Because we only talked about what we had to
3 talk about and then I -- we left.

4 Q All right. Just make sure that you don't tell
5 us what you talked about, because that would make Jim
6 very nervous.

7 All right. And were all these meetings that
8 you've discussed so far in person?

9 A Yes.

10 Q And then in the -- so thus far you've told me
11 about a meeting yesterday, a meeting on Friday, another
12 meeting before the meeting on Friday, and then did you
13 also meet with your lawyer prior to that -- that meeting
14 on a fourth occasion?

15 A Prior to all those, I met him when I went to
16 his office to ask him for help on this case.

17 Q Okay. Do you feel like you had sufficient time
18 to talk with your lawyer about this case?

19 A Yes.

20 Q How old are you, sir?

21 A How old am I?

22 Q Yes.

23 A Seventy-three.

24 Q Are you a high school graduate?

25 A Yes.

1 THE REPORTER: What was that?

2 A Yes.

3 Q Are you a high school graduate?

4 A Yes.

5 Q When did you graduate high school?

6 A In 1967.

7 Q Where did you graduate high school from?

8 A Thomas Jefferson High School.

9 Q All right. You served in the military, right?

10 A Yes.

11 Q When did you serve in the military?

12 A From '67, '68. I gave it three years. Entered
13 in about '67.

14 Q You served in the army; is that right?

15 A Yes.

16 Q Where were you stationed?

17 A My last station was in [indiscernible] Ramstein
18 in Germany.

19 Q Do you serve anywhere else overseas?

20 A I did not understand the question, sir.

21 Q Other than that base in Germany, did you serve
22 anywhere else overseas?

23 A No, sir.

24 Q Do you receive any medals that were not also
25 given to other people in your -- in your unit?

1 A No.

2 Q What did you do in the army?

3 A I was in the airborne divisions.

4 Q Did you ever serve in the military police?

5 A No.

6 Q Do you have any post high school educational
7 experience?

8 MR. MARTINEZ: Objection. Vague.

9 Q Did you ever go to college? A trade school?

10 A I attended classes at community college, but I
11 never finished.

12 Q What classes -- what -- were you pursuing a
13 degree at that community college?

14 A I cannot say if I was pursuing a degree. I
15 started taking classes, but I had no idea what I wanted
16 to do.

17 Q When were you hired by the El Paso Police
18 Department?

19 A In '71 I believe. 1971.

20 Q Did you ever work for any other law enforcement
21 agency? So either a police department or a correctional
22 facility or sheriffs office or anything like that before
23 you worked for El Paso?

24 A No.

25 Q All right. And can you tell us when you were

1 hired in 1971, did you attend a -- a police academy?

2 A Yes.

3 Q How long was that academy?

4 A I believe it was six months.

5 Q And when you left the academy, where were you
6 assigned?

7 A It would be patrol division.

8 Q And for how long were you assigned to the
9 patrol division?

10 A I was a patrolman for ten years.

11 Q In that time when you were assigned to patrol,
12 were you serving as a -- in a marked car in uniform the
13 whole time, or were there times when you worked out --
14 out of uniform?

15 A In the initial patrol, in marked cars, and then
16 I was assigned to different -- I would say divisions
17 or -- or -- so that means I used the marked car,
18 unmarked car.

19 Q What were the different divisions that you were
20 assigned to?

21 A The technical division, the SWAT team. Yeah.
22 Basically those two.

23 Q How long did you serve in the tactical
24 division?

25 A I don't remember, sir.

1 Q Was it more than a year?

2 A Yes, sir.

3 Q Was it more than five years?

4 A I -- I don't remember if it was more than five
5 years.

6 Q When you were assigned to the SWAT unit, were
7 you full time on the SWAT unit, or was it a part-time
8 position?

9 A It was a part-time position.

10 Q Okay. When you were in the patrol division,
11 were you ever assigned to patrol the northeast side of
12 the city?

13 A The very first day I entered the department.

14 Q How about after the very first day that you
15 were assigned to patrol? Did you ever serve in the
16 northeast portion of the city?

17 A No, sir.

18 Q Why was that? Why -- why didn't you serve in
19 the northeast side of the city?

20 A Repeat the question, please.

21 Q Why did you not serve on the northeast side of
22 the city while you were in the patrol division?

23 A The supervisors or lieutenants, they assigned
24 you a district, and my districts were not assigned in
25 northeast.

1 Q Did you leave the patrol division?

2 A Say again.

3 Q Did you leave the patrol division?

4 A Yes.

5 Q When did you leave the patrol division?

6 A Approximately ten years after I entered, I took
7 a detective exam.

8 Q And was the list created based on the results
9 of that exam?

10 A Yes.

11 Q Were you on that list?

12 A Yes.

13 Q Were you promoted from that list?

14 A Yes.

15 Q And when did you make detective?

16 A In early 90s.

17 Q Early 80s?

18 A Early -- 90s. About ten years after I left the
19 academy.

20 Q And I'm -- I'm doing the math, and there is
21 three kinds of lawyers. Ones who are good at math and
22 ones who aren't, but I'm looking at 1971 being when you
23 left the academy. So ten years later would put as at
24 early 80s?

25 A 90s.

1 Q 90s.

2 A Yes, sir. But you could be correct.

3 Q All right. And that -- I'm not trying to trick
4 you up or anything, but would you -- early 80s sound
5 right?

6 A 80s. 80s. Yes, sir.

7 Q Okay. All right. So when you made detective,
8 did you go to a detective school?

9 A Yes. I mean, I went to school. It wasn't a
10 detective school.

11 Q I guess what I mean is when you made detective,
12 were you provided additional training by the department
13 in how to become a detective?

14 A I would say, no. Not how to become a debt.

15 Q Do you receive any additional training when you
16 became a detective in the early 80s?

17 A Yes.

18 Q What additional training did you receive when
19 you became a detective?

20 A In -- inside seminars. In-house seminars. I
21 went to a lot of schools, outside the police department.

22 Q What school did you attend outside the
23 department?

24 A There is homicide schools, interviews and
25 interrogations, caliber views, fingerprints, SWAT

1 training, and other stuff. I don't recall.

2 Q When you made detective in the early 80s, where
3 were you assigned?

4 A I was assigned to the -- I was assigned to the
5 crimes against persons unit.

6 Q And what -- was there a particular physical
7 location where you worked out of when you were assigned
8 to the crimes against persons?

9 A It was -- our office is downtown here where the
10 old El Paso district -- old county building is.

11 Q Where there different crimes against persons
12 offices within the city, or is it just one at the time?

13 A Our division was made up of three separate
14 divisions. In the -- in the same building -- the same
15 office space but it was three.

16 Q And how did you differentiate among those
17 three?

18 A Some detective assigned to the homicide
19 division. Others to the robbery and other were assigned
20 to sex crimes.

21 Q And which one of those were you initially
22 assigned to?

23 A Homicide.

24 Q Say again.

25 A Homicide division.

1 Q Okay. Did you remain in the homicide division
2 for your entire time as a detective?

3 A I would say, yes. But I did work like a
4 robbery section for about a week during that time.

5 Q When you were first starting you mean?

6 A No, sir. No. It was later on during my time
7 at homicide.

8 Q Did you ever sit for the sergeants exam?

9 A No, sir. I did not.

10 Q What was your civil service rank when you were
11 retired?

12 A From the police department?

13 Q Yes, sir.

14 A Detective.

15 Q Okay. How long did you remain working homicide
16 at that downtown office?

17 A I don't recall what year we moved to the
18 building there on [indiscernible] -- on Raynor. On
19 Raynor. Yeah. I don't recall.

20 Q What did you call that building that you moved
21 to?

22 A Police headquarters.

23 Q I'm sorry. I didn't hear you.

24 A Police headquarters.

25 Q And how long did you remain working out of

1 the -- out of police headquarters?

2 A For the remainder of my 11 years I believe.

3 Q Was that the Five Points Police Station?

4 A Yes.

5 Q When you worked homicide, were you assigned to
6 work with a partner?

7 A Not really. No.

8 Q Did you sometimes work with a partner?

9 A Yes.

10 Q Which were the partners that you had while you
11 were assigned to homicide?

12 A I worked with different detectives. You got
13 Julio, Arbogast, Charlie Ortega, Charlie Rivera.
14 Whoever was there, we weren't considered partners.

15 Q Were you ever partnered with Scott Graves?

16 A I -- I don't -- I can't follow the question.
17 I've worked with Scott Graves, but to say he and I are
18 partners, no. We weren't.

19 Q How did you first meet Scott Graves?

20 A At the homicide office when he came into
21 homicide.

22 Q Do you ever socialize with Scott Graves out --
23 outside of work?

24 A No.

25 Q When you knew him in homicide, what did he look

1 like? Let's say in and around the timeframe in 1993.

2 A Blondish hair, thin. That's -- I never really
3 paid attention to what he looked like. No.

4 Q About how tall was he?

5 A I would say five-eight, five-nine.

6 Q Did he wear glasses?

7 A You know, I don't recall.

8 Q Mustache?

9 A I don't recall him ever having a mustache.

10 Q What about you? Did you use to have a
11 mustache?

12 A Sorry?

13 Q Did you used to have a mustache?

14 A Yes.

15 Q You look like you'd look good with a mustache.
16 What did you look like in 1993?

17 A Sir, I don't recall what I looked like in 1993.

18 Q Well, what color was your hair?

19 A Black.

20 Q And how tall were you?

21 A Five-eight, five-nine.

22 Q And what was your build back in 1993?

23 A Regular. Thin.

24 Q Did you wear glasses?

25 A Now I do.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q What about back in 1993? Did you wear glasses?

2 A I believe so, sir. I believe so.

3 Q How did -- how did you first meet Earl
4 Arbogast?

5 A Again, in homicide.

6 Q Who got there first? You or him?

7 A I think -- I think I did.

8 Q Did you ever socialize with Arbogast outside of
9 work?

10 A No, sir.

11 Q What about Charlie Ortega? How did you meet
12 him?

13 A I think the same when he was assigned to the
14 homicide division.

15 Q When was he assigned to the homicide division?

16 A I don't know, sir. I don't recall.

17 Q Was it before or after 1993?

18 A I -- I don't know. I know I was there first
19 but I don't know.

20 Q But you didn't know him before he -- he was a
21 working at homicide; is that right?

22 A I don't believe I did. No.

23 Q Did you ever socialize with Charlie Ortega
24 outside of work?

25 A Yes.

1 Q Were there two Charlie Ortega's?

2 A I only know of one.

3 Q Okay.

4 A The one in homicide.

5 Q All right. And where would you and Charlie
6 Ortega socialize outside of work?

7 A Repeat that again, sir, please.

8 Q Where would you and Charlie Ortega socialize
9 outside of working?

10 A We would have a couple of drinks some -- some
11 place.

12 Q Where would you go?

13 A I think the place that we used to like to go to
14 was a bar Joe, John, and Marks by our police department
15 building.

16 THE REPORTER: It was what?

17 A Joe, John, and Mark. A bar by the police
18 departments building there on Raynor. Five Points.

19 Q How often would you and Charlie Ortega
20 socialize outside of work?

21 A Sir, I don't know. It was -- it wasn't like
22 everyday. No.

23 Q When did you retire from the El Paso Police
24 Department?

25 A In February of 1997.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q From the time you worked homicide, did you
2 remain -- you know, apart from that week working
3 robbery, were you working homicide up until your
4 retirement?

5 A Yes.

6 Q Were you ever assigned to the cold case unit?

7 A Yes.

8 Q And when were you assigned to the cold case
9 unit?

10 A It -- it was during my time with the homicide
11 division. But cold cases, I may have worked one or two
12 but I -- we didn't have -- it was still in the division,
13 so we would say, we're working a cold case.

14 Q When you retired from the El Paso Police
15 Department, where did you go work at?

16 A I went to work at El Paso County.

17 Q What did you do for the county?

18 A I was a bailiff for the plea board district
19 court.

20 Q Do you work for a particular judge or just for
21 the courthouse?

22 A A judge.

23 Q Which judge?

24 A Gonzalo Garcia.

25 Q Did you work for any other judges?

1 A Yes.

2 Q Which other judges did you work for?

3 A Patrick Garcia.

4 Q Did you work for any other judges?

5 A No.

6 Q How long did you work for the county?

7 A Seventeen years I believe.

8 Q [indiscernible] When did you retire? 2014?

9 A I don't -- I don't recall the exact date I
10 retired, but I spent 17 years.

11 Q All right. When you retired from the county,
12 did you work for any other person or place?

13 A No, sir. No, sir.

14 Q Do you have any intention to go back to work?

15 A No, sir.

16 Q You enjoying your retirement?

17 A Yes, sir.

18 Q Do you have any intent to move out of the
19 country?

20 A No.

21 Q Or move out of the state?

22 A No.

23 Q All right. I want to ask you about training
24 that you received, and -- and starting with homicide
25 training, were you trained that it was important to

1 preserve crime scene evidence?

2 A Yes.

3 Q And were you trained that it was important to
4 take notes during the course of your interview or --
5 strike that.

6 Were you trained that it was important to take
7 notes during the courses of your investigation to
8 document the steps that you took during the
9 investigation?

10 MR. MARTINEZ: Excuse me. Excuse me, Mr.
11 Marquez. Madam Court Reporter, can you read that to me?
12 The question please.

13 THE REPORTER: Yes.

14 (Requested portion was read)

15 MR. MARTINEZ: Thank you.

16 Q Can you answer the question?

17 A I would say it depended on what -- on -- on the
18 interview or the investigation. It depended.

19 Q Well, how about in homicide? Was it important
20 document the steps of your investigations in homicides?

21 A Like I say, it depended if -- I mean, of
22 course -- I would say it depended on -- if I spoke to
23 you briefly, it just depended, sir. Really.

24 Q Sorry. I'm trying to search through something.
25 I'm having computer issues so I'm going to move -- let

1 me -- let me ask you instead about training that you
2 received to conduct interviews and interrogations.
3 Where did you receive that training?

4 A I believe it was in Dallas, Texas.

5 Q And who conducted the training?

6 A I don't recall their names but personnel from
7 the organization I believe. [indiscernible]

8 Q Which organization?

9 A It was the Kinesic School of Interviews and
10 Interrogations.

11 Q And can you spell the name?

12 A I believe it's, K-I-N-E-S-I-C.

13 Q And how long was that training?

14 A About a week. Week total.

15 Q Were you trained in the Reid Method of
16 Interrogation?

17 A I don't recall the Reid Method of
18 Interrogation. No, sir. I don't recall.

19 Q Were you trained to thoroughly investigate a
20 suspect before you interrogated that suspect?

21 A I can't say that. No. I cannot.

22 Q You can't say that because you -- that's --
23 that wasn't how you were trained, or what was your
24 training?

25 A No. It's I don't -- I can't say that

1 because -- I can't say that I was ever told, "Make sure
2 you investigate this first." I mean, find out -- the
3 way I did it was totally different. I needed that
4 information.

5 THE REPORTER: You needed what?

6 A I needed to find out about the person that I
7 was investigating or --

8 Q Well, let me put it this way. Did you -- were
9 you trained to thoroughly investigate the crime before
10 you interrogated a suspect?

11 A Well, we're trained to investigate the crime.
12 The word thoroughly, I don't, you know -- I just -- we
13 were trained to investigate the crime.

14 Q Is one reason to thoroughly investigate a crime
15 before you interrogatee is to make absolute sure the
16 correct person is being interrogated as the suspect?

17 A I --

18 MR. MARTINEZ: Objection. Form.

19 A I wouldn't say it like that. No, sir.

20 Q All right. What, according to your training,
21 is the difference between an interview and an
22 interrogation?

23 A Excuse me. An interrogation would be you're
24 trying to get information on a certain or specific item
25 or thing. An interview is to try and get information as

1 to whether you want a job or your -- you're looking for
2 the person is eligible for something. That would be
3 my -- my interpretation.

4 Q So based on your training, if you're
5 interrogating someone, that's to gather specific -- or
6 information about a specific incident or circumstance;
7 is that right?

8 A Correct.

9 Q Were you trained that before you interrogate
10 somebody you need to have a belief that the person is
11 guilty before you begin your interrogation?

12 A No, sir. I wouldn't -- I wouldn't say that.

13 Q Have you heard the term tunnel vision before?

14 A Yes.

15 Q Were you trained to follow the evidence
16 wherever the evidence led you and not succumb to tunnel
17 vision where you're just focused on one particular
18 suspect?

19 A We were trained to go where the investigation
20 led us, so I cannot agree with that statement.

21 Q Okay. And were you trained to avoid succumbing
22 to tunnel vision and not focusing just on one suspect
23 and try and make the facts fit your theory of the case?

24 A Sir, again, I would say that we were trained to
25 investigate, and wherever the investigation led us to,

1 is where we went.

2 Q And were you specifically trained not to fall
3 prey to tunnel vision?

4 MR. MARTINEZ: Objection. Vague.

5 A We were trained to investigate the case and
6 follow wherever the investigation led us to. It wasn't
7 to say -- that's what we were trained to do or at least
8 my training.

9 Q And what I -- what I'm trying to get at, and
10 I -- alls I'm trying to establish is that, were you
11 trained that there is a risk that police officers might,
12 if they're not, you know, aware of it, might fall prey
13 to tunnel vision and start focusing only on one witness
14 to the exclusion of others or only on one suspect
15 despite what the evidence is showing you?

16 A I would [indiscernible] you, sir. My answer
17 would be that we were trained to investigate. If the
18 investigation led us one way, that's where we went.

19 MR. AINSWORTH: The camera has gotten a little
20 fuzzy.

21 MR. MARTINEZ: The camera?

22 MR. AINSWORTH: Yes.

23 MR. MARTINEZ: Oh, boy.

24 MR. AINSWORTH: Or it's the witness, but I
25 think it's the camera.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 MR. MARTINEZ: Standby. I may disconnect you,
2 Russell, but I'll get back on if it does. Russell, give
3 me a second. Let's go off the record. Let me -- let me
4 log off and I'll come back on in a second. Hold on.

5 MR. AINSWORTH: All right. Off the record
6 please.

7 THE VIDEOGRAPHER: We are off the record. The
8 time is 10:41 a.m.

9 (Recess from 10:41 a.m. to 10:42 a.m.)

10 THE VIDEOGRAPHER: We are back on the record.
11 The time is 10:42 a.m.

12 Q All right. What, according to your training
13 and practice, are the primary techniques of
14 interrogation?

15 MR. MARTINEZ: Objection. Vague.

16 A To seek the truth. I don't know.

17 Q Well, how are you trained to seek the truth?
18 What techniques?

19 A I -- I don't recall the techniques. Back then
20 when I went to the school, but I don't recall the
21 technique that they use.

22 Q Okay. Well, what about in your -- your
23 experience as a El Paso detective? Did you conduct
24 interrogations?

25 A Yes.

1 Q You -- judging by how long you were a
2 detective, I -- I got to believe you conducted hundreds
3 of interrogations; is that right?

4 A Don't know if they were hundreds but quite a
5 few. Yes.

6 Q Well, I mean, you were a detective for what, 15
7 years, 16 years?

8 A Eleven.

9 Q Eleven years. And you retired in '97?

10 A Yes.

11 Q All right. In those 11 years, I mean, you
12 conducted more than ten interrogations a year, right?

13 A Sir, I don't recall how many per year. That
14 was -- I don't remember how many homicides per year we
15 had, if I worked a homicide case or not.

16 Q I'm not asking you any of those questions, sir.
17 I'm asking you, did you conduct more than ten
18 interrogations a year?

19 A I don't know, sir.

20 Q All right. Do you think you conducted less --
21 fewer than ten interrogations a year?

22 A I don't know, sir.

23 Q Well, how many homicide cases did you work as a
24 homicide detective?

25 A I don't know. As either assisting or? I don't

1 know how many we had per year.

2 Q Yeah. Either as the case agent or assistant.

3 A I don't know, sir.

4 Q Were you a busy as a homicide detective?

5 A We were all busy. Yes.

6 Q You were all busy. What were you busy doing?

7 A Working either a case or our own cases that we
8 had assigned to us.

9 Q So everyday for those 11 years that you were
10 working, you were working on -- on a homicide, either
11 yours or someone else's, right?

12 A No, sir.

13 Q All right. What else were you doing apart from
14 investigating homicides?

15 A In homicide, we also were assigned regular
16 cases, assaults, cases that we have to work and then
17 when a murder came up or a homicide came up, then we
18 were assigned to work that until that -- we took care of
19 that.

20 Q I see. So you were working on a felony case
21 everyday that you're working as a homicide detective,
22 but they weren't all homicides. Is that fair to say?

23 A Not all the cases that we worked out of that
24 section were felonies. We had some assaults, class A
25 assaults, assaults, aggravated assaults. Some were

1 felonies. Some were misdemeanors, and then some were
2 homicides.

3 Q Were you an experienced detective in 1993?

4 A I can't -- all depends on who was -- was taking
5 whether I had experience or not, but I had worked some
6 cases.

7 Q I'm asking you. Were you an experienced
8 detective in 1993? Well, let me strike that.

9 Were you providing on-the-job training to other
10 detectives while you were in the homicide unit?

11 A Yes.

12 Q And so you helped train other detectives,
13 right?

14 A Yes.

15 Q Did you train other detectives to do it the
16 right way?

17 A I'm going to say that I -- I did not -- let's
18 say, train. If they asked me a question, I would let
19 them know what I had done and how -- how to go about
20 doing something better. But as far as training them,
21 no.

22 Q Did you -- did you provide on-the-job training
23 to other detectives on how to do it the right way?

24 A I don't know how to answer that other than some
25 detectives would come and ask me, "Hey, how -- how can

1 we do this?" Then I tell them, "Hey, this is the way to
2 go about it." That's -- if you want to call that
3 training, then that's it.

4 Q Okay. Really I'm trying to find out, do you
5 tell them to do it the right way or the wrong way?

6 A Well, the right way.

7 Q All right. Were you an inexperienced detective
8 in 1993?

9 A I had experience. I don't -- wouldn't call
10 myself inexperienced, but I had experience working in
11 that organization.

12 Q About how many murder cases did you work a
13 year.

14 A Sir, I stated before, I don't know the exact
15 number. For 11 years, whatever we had that one year,
16 either I assisted in working, knew about them, didn't
17 work, so I cannot give you a number. I don't know.

18 Q I didn't ask you for a number. I didn't -- I
19 didn't say how many. I said, about how many per year.
20 I'm looking for your best approximation.

21 A I believe I would say four.

22 Q All right. Four per year?

23 A Probably. Yes, sir.

24 Q And so when you conducted interrogations as a
25 detective, what techniques would you use to obtain

1 **confessions?**

2 MR. MARTINEZ: Objection. Vague.

3 A First, I would try to establish a rapport with
4 whoever I was going to interview or interrogate. Learn
5 something about him. And proceed to have a conversation
6 with him before. Make him feel at ease until we got
7 into the portion of the interrogation.

8 **Q Okay. And then when you got into the**
9 **interrogation part, what technique would you use to**
10 **elicit to that an admission?**

11 A My inter --

12 MR. MARTINEZ: Hold on. Hold on. Objection.
13 Lack of foundation. Facts not in evidence. Go ahead.

14 **Q Go ahead and answer.**

15 A Repeat the question please. The --
16 (Simultaneous speakers)

17 **Q What techniques would you use to try and elicit**
18 **the confession when you're conducting the interrogation**
19 **part of your interrogation?**

20 MR. MARTINEZ: Objection. Facts not in
21 evidence. Lack of foundation. Go ahead.

22 A I wasn't there to elicit anything. It was to
23 find out what he knew or how he was involved. It wasn't
24 eliciting information from him.

25 **Q Okay. You said that you tried to make the**

1 suspect feel at ease until the interrogation?

2 A Yes, sir.

3 Q And I'm trying to -- I'm trying to find out
4 what would you do during the interrogation portion of
5 your interrogation?

6 A Reread him his rights. Ask him what happened
7 at first before I took anything in writing and then we
8 went after -- like it was a question and answer type of
9 interrogation.

10 Q Were you trained to use accusations with a
11 suspect?

12 A No.

13 Q All right. And when you conducted
14 interrogations, would you use accusations? Would you
15 accuse people of the crime that they were there to be
16 questioned about?

17 A Not -- no. I would -- I would not say
18 that's -- that's not what I would -- what I would say.

19 Q What would you say?

20 A He would tell me what they are accused of but
21 --

22 (Simultaneous speakers)

23 Q But you would be -- okay. Go ahead, sir.

24 A What they are accused of.

25 Q But you would be careful not to accuse them,

1 yourself, by saying things like, you shot this person or
2 you're -- you stabbed them or something like that. Is
3 that what you're saying?

4 A That's what I'm saying. Yes.

5 Q And so were you trained to accuse suspects of
6 lying if they denied responsibility?

7 A No.

8 Q In your practice when you conducted
9 interrogations, would you accuse people of lying if they
10 denied responsibility for the crime?

11 A No.

12 Q Were you trained to cut people off when they
13 tried to deny responsibility by, you know, talking over
14 them or -- or telling them, no?

15 A No.

16 Q As a detective, was it your practice to cut off
17 their denials when people denied responsibility?

18 A No.

19 Q Were you trained to use false evidence ploys
20 during interrogations? A situation where you tell them
21 that there is evidence of their guilt that doesn't
22 really exist?

23 A No.

24 Q As a detective, when you conducted
25 interrogations, would you use false evidence ploys and

1 tell people that they -- that there was evidence of
2 their guilt that didn't exist?

3 A I -- I would say no.

4 Q All right. Well, were you trained to try to
5 increase the suspects anxiety during an interrogation?

6 A No.

7 Q Were -- was it your practice to do the
8 opposite? To try and reduce their anxiety?

9 A No.

10 Q Were you trained to use inducements? Like a
11 suggestion if they would get some kind of benefit if
12 they stopped denying and started confessing?

13 A No.

14 Q Were you trained to use minimization
15 techniques? Technique where you would suggest to the
16 person that they can minimize the wrongdoing if they go
17 along with it? Such as, "You probably didn't mean to",
18 or "It was an accident", or something like that?

19 A No.

20 Q Was that something that you did as a detective?
21 Would you tell people that, you know, use minimization
22 techniques suggesting ways that they may have committed
23 the crime but weren't really as culpable because they're
24 acting in self-defense or it was an accident or
25 something like that?

1 A No.

2 Q Were you trained that the goal of an
3 interrogation is to obtain a confession?

4 A No, sir.

5 Q Were you trained to avoid physical coercion
6 during an interrogation?

7 MR. MARTINEZ: Objection. Vague.

8 A Yes.

9 Q Did you receive any training about
10 psychological coercion?

11 A When I -- yes.

12 Q What is psychologically coercive interrogation?

13 A Let me rephrase that. Not interrogation.
14 Psychological interrogation, no.

15 Q Well, let me put it this way. Were there
16 techniques that you're trained not to use because they
17 might be psychologically coercive to a witness?

18 A No.

19 Q Do you see any problem with using
20 psychologically coercive interrogation technique?

21 MR. MARTINEZ: Objection. Vague.

22 A I -- I can't answer that, sir. I -- I don't --
23 I don't know.

24 Q Well, when you were a detective, are you saying
25 that you would just ask the person what happened, and

1 let them tell you what happened?

2 A Yes.

3 Q Okay. Would you be careful to -- well, strike
4 that.

5 You're aware that sometimes people might give
6 false confessions to the police, right?

7 A Yes.

8 Q And so you wanted to insure that the
9 information you were receiving from someone -- from a
10 suspect was reliable, right?

11 A I wanted -- well, it depends.

12 Q Did you want to receive unreliable information
13 from a suspect?

14 A No.

15 Q You wanted to make sure the information was
16 reliable, right?

17 MR. MARTINEZ: Objection. Vague.

18 A I wanted to make sure that he was telling me
19 the truth.

20 Q Yeah. And so one way to insure that the
21 witness was telling the truth was to look for
22 corroboration in what the witness was telling you,
23 right?

24 A Yes.

25 Q And one way that you looked for corroboration

1 is to see if the suspect knows nonpublic crime scene
2 facts about the crime that, you know, only somebody who
3 was there would know, right?

4 A Yes.

5 Q And so, as a detective, you would be careful to
6 not reveal nonpublic crime scene facts to a suspect
7 before the suspect brought those up to you, right?

8 A Correct.

9 Q Because you didn't want the -- the suspect to
10 just parrot back stuff to you that you were telling the
11 suspect. You wanted to hear it from the suspect first,
12 right?

13 A Can you repeat that? It was a long sentence.

14 Q Sure. You didn't want the suspect to just
15 parrot back facts that you were providing to the
16 suspect, right?

17 A I was -- there is -- I wasn't given him any
18 facts if that's what you're talking about. I don't give
19 the suspect facts about what I know or about what maybe
20 happened.

21 Q You want the suspect to provide those facts to
22 you, correct?

23 A Correct.

24 Q Did you receive training about certain types of
25 individuals that might be more vulnerable to

1 interrogation techniques?

2 A Not exactly.

3 Q Well, were you trained that, for example,
4 juveniles might be more susceptible to coercive tactics
5 than adults?

6 A No. I could not say that, sir.

7 Q Okay. Was it your understanding -- well, did
8 you alter your interrogation techniques at all for
9 juveniles as opposed to adults?

10 A No.

11 Q Were you trained to provide adequate food and
12 water and bathroom breaks to suspects?

13 A Yes.

14 Q Were you trained about the possibility of false
15 confessions?

16 A I would say no.

17 Q Do you believe that false confessions are a
18 problem in the criminal justice system?

19 MR. MARTINEZ: Objection. Vague.

20 A Maybe.

21 Q Why do you say maybe?

22 A Because I don't know reference. I don't know
23 how many -- if there are any out there or if there
24 aren't, or how many at that point, so I can't say -- do
25 I believe? Yes.

1 Q Have you ever received a false confession?

2 A I don't recall, sir, ever receiving one.

3 Q Have you been trained to avoid using any
4 techniques during interrogations at all apart from
5 physical coercion?

6 A I don't recall, sir.

7 Q Were you trained to use open-ended questions
8 rather than leading questions during interrogations?

9 A The training was, let them speak and don't put
10 words in their mouth. I believe that's the way I
11 remember.

12 Q Were you trained whether it was okay to scream
13 at a suspect?

14 A No, sir. That was not in training. No. That
15 was not training that we received.

16 Q Did you think it was okay to scream at suspects
17 when you were a detective?

18 A No.

19 Q What about cursing at suspects? Was that okay?

20 A No.

21 Q When you were a detective, would you scream at
22 suspects?

23 A No.

24 Q When you were a detective, did you curse at
25 suspects?

1 A No.

2 Q Was there ever a time you either screamed or
3 cursed at a suspect?

4 A No.

5 Q Did you ever use physical force against a
6 suspect inside a police station?

7 A I'm going to say yes.

8 Q When did you use physical force against a
9 suspects inside a police station?

10 A I don't remember the exact date, but the
11 physical force that I used was just my arm against his
12 chest after he had gotten up off the chair during a
13 service -- serving of about five warrants in the CAP
14 office.

15 Q Sir, did you say serving of five warrants?

16 A Yes.

17 Q Who was this person that you placed your arm
18 against the chest inside of a police station?

19 A Angel Rivera.

20 Q How is that name spelled?

21 A A-N-G-E-L, R-I-V-E-R-A.

22 Q Well, why did you place your arm against his
23 chest inside a police station?

24 A I was serving some warrants on him. He got up
25 off the chair angry, and I had to use whatever I did

1 just to put him up against the wall to keep him calm.

2 Q Which arm did you use?

3 A My right arm.

4 Q Did he strike you?

5 A No, sir.

6 Q What room were you in?

7 A In my office at the CAP office.

8 THE REPORTER: At the what?

9 Q And why was Mr. Rivera in your office?

10 A We were serving him with an additional six --
11 five or six warrants.

12 Q Did you use any other force other than placing
13 your arm against his chest and driving him into the
14 wall?

15 A I did not drive him into the wall, sir. No.

16 Q Then just tell us what happened.

17 A We picked him up at the jail. We had
18 additional warrants for him. He was already in custody
19 on some warrant that we had before. We were charging
20 him with an additional five murders. Picked him up.
21 Got him over there. Sat him in my office. As I was
22 going through the warrants, the warrant for this murder,
23 for this one, for this one, for this one, he jumped up,
24 started screaming. I had to get up to put my arm around
25 him and put him up against the wall. I didn't pin him.

1 I put him up against the wall and then, by that time,
2 another detective came. I don't remember who it was.
3 We sat him back down, and after that, we put him back in
4 jail.

5 Q Did you strike him at all?

6 A No, sir. I did not.

7 Q Did he complain of any injuries?

8 A Yes. He did.

9 Q What injuries did he complain of?

10 A He complained that we had struck him or that I
11 had struck him. Put him back in jail. And then from
12 then on, there was investigating. The nature was
13 investigated.

14 Q And did you have to give a statement to
15 internal affairs?

16 A Yes. I did.

17 Q And what was the outcome of that investigation?

18 A It was not sustained. Through their
19 investigation? They -- it didn't happen. Nothing
20 happened the way that he said happened.

21 Q And what did he say happened?

22 A What I just finished telling you, sir.

23 Q He said that you struck him?

24 A Yes, sir.

25 Q And where did he say you struck him?

1 A The face.

2 Q What happened to the charges against
3 Mr. Rivera?

4 A The last I understand, he's still in prison.
5 I'm not sure.

6 Q Have you used force against a suspect inside a
7 police station on any other occasion?

8 A No.

9 Q You can agree that it would be terribly wrong
10 to strike a 16-year-old suspect in the head, right,
11 during an interrogation?

12 A Yes.

13 Q Do you know what a promise of leniency is?

14 A Not exactly, sir.

15 Q Were you trained not to tell people that if
16 they confessed, they could go home, or if they confessed
17 that nothing would happen to them?

18 A No.

19 Q As a detective, would you tell people if they
20 confess, things would be better for them?

21 A No.

22 Q Did you tell people, as a detective, that if
23 they confessed, you know, nothing -- nothing would
24 happen to them or they could go home?

25 A No.

1 Q Why not? Why didn't you tell people that?

2 A Because I am not -- I did not say that to them.

3 Q And why not?

4 A Because I don't know what the outcome would be.

5 Q And so you don't want to give them false hope,
6 and then have them confess and them actually get in
7 trouble?

8 A On -- on my behalf, yes.

9 Q Back in 1993, was there anything preventing you
10 from recording -- audio recording your interrogation of
11 a suspect?

12 A I don't recall, sir. I -- I believe -- maybe
13 we had it but I don't know what year we brought it into
14 the CAP office in '93.

15 Q Okay. When you're conducting a interrogation,
16 you want to look not only for corroboration with the
17 information that you know, but you also want to learn
18 about what evidence there might be that you can use to
19 corroborate the confession that you haven't yet found;
20 is that right?

21 MR. MARTINEZ: Objection. Vague.

22 A Possibly that's what was missing.

23 Q Well, for example, if you -- you're
24 investigating a robbery, and you haven't found the
25 proceeds of that crime, you want to ask the suspect

1 where the proceeds are of the crime, right?

2 A You ask if he knows.

3 Q And you want to find out, right?

4 A If he knows where they're at, yes.

5 Q Because if the suspect is able to tell you the
6 15 carts of cigarettes that I stole are in my friend's
7 basement, and then you go to the friend's basement,
8 you're able to corroborate that the information he is
9 providing you is -- is correct, right?

10 A Yes.

11 Q And if you don't have the murder weapon, you
12 want to find out where the murder weapon is, right?

13 A Yes.

14 Q And so you ask the suspect, where is the murder
15 weapon, and if the suspect is able to tell you where to
16 recover the murder weapon, that also gives you
17 corroboration as to -- that the confession is accurate,
18 right?

19 A Yes.

20 Q Sometimes when you question witnesses they tell
21 you that other people have confessed to them, right?

22 A Repeat the question again, please, sir.

23 Q Sure. It's happened before that people have
24 told you that somebody else confessed to a crime to
25 them, right?

1 A Yes.

2 Q And so -- and in the case of a serious crime
3 like -- like murder, you want to find out information
4 about that statement, right?

5 A Yes.

6 Q You want to know who -- who was present for the
7 statement, right?

8 A Yes.

9 Q You want to know when the statement was made,
10 correct?

11 A Yes.

12 Q You want to know where the statement was made,
13 right?

14 A Yes.

15 Q And you want to know what was said, correct?

16 A Yes.

17 Q And were you familiar with the policies of the
18 El Paso Police Department?

19 MR. MARTINEZ: Objection. Vague.

20 A Say it again, sir.

21 Q Were you familiar with the policies of the El
22 Paso Police Department?

23 MR. MARTINEZ: Objection. Vague.

24 A Not all the policies. No.

25 Q No. What about the ones -- the important ones?

1 Like the ones about confessions and interrogations.

2 Were you familiar with those?

3 A It depends, sir.

4 Q All right. Why wouldn't you be familiar with
5 El Paso Police Department policies?

6 A I --

7 MR. MARTINEZ: Objection --

8 A I did not say I was unfamiliar. We had several
9 policies for the treatment of juveniles and other
10 policies for the treatment of adults.

11 (Exhibit No. 1 was marked for identification.)

12 Q All right. Well, let me show you a portion of
13 the policy handbook for -- let me -- from 1992. One
14 second. All right. Okay. Now, I'm -- I'm showing you
15 a -- what we'll mark as Exhibit 1 to your deposition.
16 This is Bates numbers Defendant City 21488 through
17 21491.

18 MR. MARTINEZ: Can you enlarge it, Russell?

19 MR. AINSWORTH: Of course.

20 MR. MARTINEZ: As large as the screen is, it's
21 still hard to read.

22 MR. AINSWORTH: Yeah. I'm going to make this
23 bigger.

24 MR. MARTINEZ: There you go. Thank you.

25 Q All right. I want to -- were you familiar with

1 this portion of the El Paso Police Department policies?

2 The procedures for obtaining a written confession?

3 MR. MARTINEZ: Do you have a page under or
4 Bates number?

5 MR. AINSWORTH: Yeah. It's Bates number 21488.
6 Defendant City. And it's page 76.

7 MR. MARTINEZ: Thanks.

8 Q Did you hear the question, sir?

9 A If I'm familiar with it? Yes, sir.

10 Q Okay. And so this is for adults. This
11 portion. So not -- not trying to mislead you or
12 anything, but it says, "When the officer becomes aware
13 of a subject willing to give a voluntary written
14 confession, the officer will take the subject before a
15 magistrate for a formal warning." Do you see that?

16 A Yes, sir.

17 Q And so for adults, when were you supposed to
18 take a suspect before a magistrate?

19 A Before you take his confession.

20 Q Okay. And is that true for all adult suspects?

21 THE REPORTER: Adults what?

22 Q Suspects.

23 A Sometimes they would want to give us a
24 statement, and then we take a statement and take them to
25 the magistrate. Or first to the magistrate. Basically

1 all the time.

2 Q So are you saying that sometimes they would
3 give a statement and then before you reduce it to
4 writing, you would bring them before a magistrate?

5 A No, sir. What I'm saying is that we take
6 them -- we take them before a magistrate when you're --
7 when you place them -- take them under arrest, take them
8 before a magistrate, and then if he's willing to give a
9 statement, then we go ahead and take it.

10 Q I see. Okay. So the -- the procedure that you
11 followed was to bring the adult before a magistrate
12 before interrogation; is that right?

13 A Correct.

14 Q Okay. All right. And I'm going to go to the
15 next page. This is page Bates numbered Defense City
16 21489. And under .7 it states, "The officer will secure
17 two unbiased witnesses excluding the officer taking the
18 confession. Confessions are never noticed. The subject
19 must then sign the confession in the presence of the
20 witnesses." Do you see that, sir?

21 A Yes, sir.

22 Q All right. Was that the policy of the El Paso
23 police department when you were a detective back in
24 1993?

25 A Yes.

1 Q And is that what you would do when you had a --
2 a suspect who is giving a confession? You would have
3 two unbiased witnesses, excluding yourself, to sign the
4 confession and -- or have the suspect sign the
5 confession pronto?

6 A If there was two unbiased witnesses present or
7 available. Sometimes it was only me or whoever. The
8 detective and a supervisor. And that was all they had.
9 We had -- there wasn't anybody else available. So
10 normally two, yes.

11 Q All right. Well, did you -- did it ever happen
12 that you're interrogating somebody at a police station
13 and you were the only person there?

14 A I would say, no, because during -- when we
15 work -- we work, there is a two-man crew or two
16 detectives, but he may have not been there. He may have
17 been out, but, generally, no. I would say no.

18 Q Well, what I mean -- sorry. Is that there is
19 other people in the police station when you're
20 conducting interrogations, right? There is desk
21 personnel. There is other police officers. There is a
22 bunch of people around, right?

23 A Not all the time.

24 Q Not all the time. So you're saying that there
25 was sometimes when there weren't other people around; is

1 that right?

2 A Right.

3 MR. MARTINEZ: Hey, Russell, when you get to a
4 good point, can we take a break, please?

5 MR. AINSWORTH: Sure.

6 Q I want to go to the next page. This is
7 Defendant City 21490. And under oral statements this
8 says that, "A prisoner might choose to make an oral
9 statement but not a written one", and it says, "Evidence
10 of his statement would probably be admissible only if he
11 has included facts and they are found be true. Some
12 examples of establishing the truth of the facts in a
13 oral statement are -- and it's the finding of secreted
14 property mentioned in the statement, the finding of
15 stolen property mentioned in the statement, the
16 discovery of an instrument with which the stated offense
17 was committed." Do you see that there?

18 A Yes, sir.

19 Q And so the policy states that it's a good idea
20 when you're conducting an interrogation to see if you
21 can find out where you can corroborate the -- the
22 confession by learning information about proceeds of the
23 property -- or -- or hidden property or the murder
24 weapon that's up to that point unknown to the police,
25 right?

1 A Yes.

2 MR. MARTINEZ: Objection. Vague.

3 Q And you know that that's a good idea too,
4 right?

5 A Yes.

6 Q All right. Let's go off the record.

7 THE VIDEOGRAPHER: We are off the record. The
8 time is 11:23 a.m.

9 (Recess from 11:23 a.m. to 11:33 a.m.)

10 THE VIDEOGRAPHER: We are back on the record.
11 The time is 11:33 a.m.

12 (Exhibit No. 2 was marked for identification.)

13 Q All right. Sir, I want to show you another
14 exhibit that we'll mark as Exhibit No. 2 to your
15 deposition. This is from that same 1992 policy manual,
16 but this concerns the chapter seven about juveniles.
17 Okay. And for the record, this is Bates numbered
18 Defendant City 21495 through Defendant City 21505. And
19 I'm going to scroll down several pages actually to
20 21502.

21 All right. So this -- this pertains to
22 interrogation. Were you familiar with the El Paso
23 Police Department's policies regarding juvenile
24 interrogation back in 1993?

25 A Yes.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q Do you see at the -- under interrogation at the
2 bottom of page 21502 it says, "Wherein possible,
3 interrogation of a juvenile suspect is conducted by
4 youth services." Do you see that?

5 A Yes, sir.

6 Q All right. Was that your practice that, when
7 possible, interrogation of a juvenile suspect is
8 conducted by youth services?

9 A No.

10 Q Why didn't you conform to the policy, when
11 possible interrogation of a juvenile suspect is
12 conducted by youth services?

13 MR. MARTINEZ: Objection. Misstates the
14 evidence.

15 A Because I'm the one that's investigating the
16 crime.

17 Q Okay. And why -- well, all right. Let's go on
18 to page 21502 of Exhibit 2, and you see where it says
19 under, A, "When an officer takes a juvenile into custody
20 and intends to take a confession, the officer must,
21 without unnecessary delay and without first taking the
22 child elsewhere, take the child to the juvenile
23 probation department. The intake officer from JPD will
24 review the officer's report to determine probable
25 cause." Do you see that?

1 A Yes.

2 Q And did you conform with that policy when you
3 were a detective and -- and you had a juvenile suspect?

4 A My recollection of the policy as it states
5 there, no. But my recollection talking them to the
6 juvenile investigative services. That was -- I don't
7 know when that was established, but we had -- we had to
8 take them there first.

9 Q All right. So you would take them to JIS?

10 A Correct.

11 Q And that was to gather the paperwork to bring
12 them to the juvenile probation department; is that
13 right?

14 A And -- yes, sir.

15 Q And you would not question the juvenile about a
16 murder until you brought them to the juvenile probation
17 department and received approval by the intake officer
18 and from the magistrate; is that right?

19 A No. Not right.

20 Q How would it work?

21 A You would have to get approval from the
22 magistrate to take a confession. The intake officer
23 would only say, yes, he's willing to give one, but then
24 you have to take him to a magistrate.

25 Q Okay. So your understanding of the policy was

1 that before you could question a juvenile about a
2 murder, you had to get both permission from or approval
3 from the juvenile probation department and from the
4 magistrate; is that right?

5 A No. Not exactly. No.

6 Q All right. Where are my -- how is it -- where
7 am I going wrong?

8 A You would -- you would take him to a intake
9 officer where he reviewed the information that we had
10 provided to him and the juvenile, and then the intake
11 officer would let us know, "Look, he's willing to go
12 ahead and give you a statement." Not give us permission
13 to take one. He's willing to give you one, and then we
14 take him to the magistrate's office, and then, again,
15 the magistrate would read him his rights and so forth
16 and ask if he's willing to give his statement. The
17 juvenile says, yes. Then we -- that's when we start
18 taking a statement.

19 Q Okay. So you needed the intake officer to
20 confirm that the juvenile is willing to take a
21 statement -- to give a statement and approval from the
22 magistrate before you could question the juvenile about
23 the murder. Is that your understanding of the policy?

24 A The policy stating of [indiscernible]. What
25 I'm saying is, the magistrate warns him, and he says he

1 still wants to give us one, so I don't know if he's
2 giving us approval or if he's in the -- the juvenile is
3 willing to give you one so take it from him.

4 Q All right. Well, let me phrase it this way.
5 Your understanding of the policy back in 1993 that --
6 was that you needed to get confirmation from the intake
7 officer that the juvenile was willing to give a
8 statement, and you needed to bring the juvenile to a
9 magistrate before you could question a juvenile about a
10 murder; is that right?

11 A Correct.

12 MR. ALMANZAN: Objection. That misstates the
13 evidence.

14 Q All right. And did you conform to the policy
15 when you interrogated Danny Villegas?

16 A Yes.

17 Q Meaning that --

18 (Simultaneous speakers)

19 MR. MARTINEZ: Russell, I'm sorry to interrupt.
20 Can we agree an objection by one defendant is good for
21 all defendants?

22 MR. AINSWORTH: I can agree.

23 MR. MARTINEZ: Thank you.

24 Q And so you did not question Danny Villegas
25 until after the intake officer had confirmed he was

1 willing to make a statement, and Danny Villegas had been
2 brought before the magistrate judge for the first time;
3 is that right?

4 A Correct.

5 Q All right. So if you look down at E. "Once
6 the juvenile has been warned, he is taken back to JPD as
7 soon as possible where the confession is obtained by
8 either the police officer or the intake officer." Do
9 you see that?

10 A Yes.

11 Q "JPD has been -- has allowed the police
12 department use of their facility on a 24-hour basis for
13 the obtaining of statements. This is to separate the
14 juvenile from any jailhouse atmosphere." Do you see
15 that?

16 A Yes.

17 Q Okay. So under the policy, you're supposed to
18 conduct the interrogation and the ultimate ensuing
19 confession at the JPD; is that right?

20 A Yes.

21 Q Okay. Did you follow that policy when you were
22 a detective in interrogating juveniles?

23 A No.

24 Q Why didn't you follow the policy when you were
25 a detective interrogating juveniles?

1 A The policy that we had with the department
2 aside from business was to take them to JIS. Juvenile
3 probation department does not provide a station that we
4 can go ahead and -- and type as far as I know.

5 Q Okay. So you're saying that it was not true
6 that JPD -- to your understanding at least, that JPD has
7 allowed the police department use of their facility on a
8 24-hour basis for the obtaining of statements?

9 A No, sir. That's not what I'm saying.

10 Q Well, then what are you saying, sir?

11 A I'm saying the police department -- our policy
12 was that the juvenile had to go to the JIS for necessary
13 paperwork, and then after that, he was taken for the
14 intake officer, and then after that before the judge,
15 and then after that back to JIS where the statement was
16 to be taken. That's the policy that we follow. Not --
17 I remember this one but that's not the one that they're
18 following for quite some time.

19 Q Well, was that written somewhere that you were
20 supposed to take a confession at the JIS?

21 A Sir, I don't know if the policy had changed. I
22 don't know. But that's what the standard procedure was
23 for us.

24 Q Okay. So you're saying that what you would do
25 was go to JIS to take the confession, right?

1 A When it came down to taking the confession,
2 JIS, yes.

3 Q And what about this part of the policy? The
4 concern about separating the juvenile from any jailhouse
5 atmosphere. Did you want to separate the juvenile from
6 any jailhouse atmosphere?

7 A Yes.

8 Q Okay. And so then why didn't you conduct the
9 interrogation at the juvenile probation department to
10 separate the juvenile from the jailhouse atmosphere?

11 MR. ALMANZAN: Objection. Argumentative.

12 A I -- the statement was taken at juvenile --
13 JIS, Juvenile Investigative Services. That is not a
14 detention facility. The JPD is. The statement was
15 taken at JIS.

16 Q Did any supervisor ever tell you, "Al, I know
17 what's written in the policy but don't do it like what's
18 written in the policy. Instead, conduct your
19 interrogations at the JIS"?

20 A No.

21 Q Did any supervisor ever tell you, "Al, I know
22 what's written in the policy, but instead of having a
23 youth officer conduct an interrogation of a juvenile,
24 you do it yourself"?

25 A No.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q Did anyone tell you that it was a good idea for
2 you to conduct an interrogation of a juvenile rather
3 than from all the policy and have a youth officer do it?

4 A No.

5 MR. ALMANZAN: Objection. Argumentative.

6 Q What was the answer?

7 A No.

8 Q So I just want to go down to five, the last
9 page of Exhibit 2, which is city -- Defendant City 21505
10 under section 7.02.012. It says, "Witness statement.
11 Before a juvenile can give a witness statement, the
12 officer first obtains permission from a parent or legal
13 guardian allowing the juvenile to go to the station,
14 give a statement, and appear in court. When practical,
15 parental permission is in writing. If permission is
16 denied, there is no statement taken." Do you see that?

17 A Yes.

18 Q Did you follow this policy that juvenile
19 witnesses could only be questioned with the permission
20 of their parent?

21 MR. ALMANZAN: Objection. Misstates the
22 paragraph that was just read.

23 A Can you repeat the question please, sir.

24 Q Sure. Did you follow this policy that if --
25 that you could only question a juvenile witness with the

1 permission of the parent?

2 MR. ALMANZAN: Objection. You're misstating.
3 It says, "When practical."

4 MR. AINSWORTH: It doesn't say that, Counsel.

5 MR. ALMANZAN: Are you reading 7.02.012?

6 MR. AINSWORTH: Well, first, we're not going to
7 do speaking objections. But it says, "If permission is
8 denied, there is no statement taken."

9 MR. ALMANZAN: And it says, "When practical",
10 above that.

11 MR. AINSWORTH: It says -- Counsel --

12 Q Mr. Marquez and only Mr. Marquez, can you
13 answer this question? Did you follow the policy that
14 clearly states, "If permission is denied, there is no
15 statement taken"?

16 A I believe that I followed that one. Yes.

17 Q Okay. So if a parent said, "Don't question my
18 child", you would not -- about a crime, you would not
19 question that -- that juvenile, right?

20 MR. MARTINEZ: Objection. Form.

21 A Correct.

22 Q All right. I want to show you some of your
23 testimony from the written hearing, and I just want to
24 bring it up. I'm using somebody else's computer so --

25 All right. This is from your testimony on

1 September 8, 19 -- 2011. And let me just bring it up to
2 the top so you can see where --

3 MR. BRITTAIN: Russell, what proceeding is
4 this? I'm sorry. I'm just trying to follow along.'

5 MR. AINSWORTH: This is -- sure. I'm going to
6 show you it. So this is the Writ of Habeas Corpus
7 hearing on September 8th, 2011.

8 Q And I'm going to direct you to page 53 -- 54 of
9 that proceeding, and I'm just going to read you some of
10 your testimony from that proceeding. This is lines 4 --
11 starting at line 4 on page 54. "So let me ask you this
12 question: Is it fair to say that in the police
13 department they teach you to report what you do, to
14 reduce it to writing, and do it in a supplemental report
15 so that you -- so that your memory doesn't fade over
16 time; is that fair?"

17 Answer, "That is fair enough."

18 Question, "They teach you that accuracy is
19 important, correct?"

20 Answer, "Correct."

21 Question, "Thoroughness is important, correct?"

22 Answer, "Correct."

23 Question, "And, basically, if it is not written
24 down, you didn't do it; is that fair?"

25 Answer, "Basically. Yes, sir."

1 And, sir, do you agree that those were the
2 answers that you gave to those questions?

3 A Yes.

4 Q And do you agree as you sit here today that
5 you're taught to report what you do, to reduce it to
6 writing, and do it in a supplemental report so your
7 memory doesn't fade over time?

8 A Yes.

9 Q And do you agree as you sit here today that you
10 were trained that accuracy was important in your report
11 writing?

12 A Yes.

13 Q And do you agree as you sit here today that you
14 were trained that thoroughness was important in your
15 report writing?

16 A Yes.

17 Q And do you agree as you sit here today that you
18 were trained that if it's not written down, you didn't
19 do it?

20 A I would say typically if it's not written down,
21 you may have done it, but you didn't -- so typically,
22 no. If it's -- like I said, there -- you didn't do it,
23 if I didn't do it, then I typically don't write it out.

24 Q I'm not sure I caught all of that. But let me
25 just -- you -- you're asked at that same hearing, you

1 know, at line 16 of page 54. "And, basically, if it is
2 not written down, you didn't do it; is that fair?" And
3 your answer was, "Basically. Yes, sir."

4 You answered that way under oath; is that
5 correct?

6 A Referenced me.

7 Q Reference you?

8 A Yes.

9 Q That's what you would do, right?

10 A Yes.

11 Q And that was how you were trained. You were
12 trained that if it wasn't written down, that meant you
13 didn't do it, right?

14 A If -- if it got written down that I did it, I
15 didn't do it, or I did, then it's written down that I
16 did. But if I didn't do it, I didn't do it. Write it
17 down.

18 Q Right. So if you -- if it's not written down
19 on paper, that means you didn't do it, right?

20 A Personally. I didn't do it. If that's what
21 you're asking.

22 Q Can I ask the court reporter to read back that
23 question? Is that possible? Or that answer. Is that
24 possible?

25 THE REPORTER: Yeah.

(Requested portion was read)

Q I'm -- I'm not asking about what you did or didn't do. I'm asking about how you were trained. Okay? And based on your past testimony, I understand that you were trained that if it's not written down, you didn't do it. Is that how you were trained?

A I -- if it's -- we were trained to write things down. What I'm reading -- what I'm reading is, I've been asked a question. If it's not written down, you didn't do it. And I said, well, if it's not written down if I didn't do it then it's not there.

Q Okay. So you were trained to write down the steps that you took in your investigation, right?

A Yes.

Q And that you should document all steps in your investigation, right?

A Technically, yes.

MR. MARTINEZ: Objection. Vague.

Q Including steps that didn't lead you to a suspect, but, you know, closed off a lead. You should still document what happened so if -- to show that you followed up on leads and it didn't go anywhere; is that right?

A Typically, yes.

Q And as a detective, you knew that if there were

1 holes in your reports, that some pesky defense attorney
2 would later try to attack the credibility of your
3 investigation based on there being holes in your police
4 reports, right?

5 A I can't answer that, sir. I don't -- I don't
6 know what defense attorneys were looking for.

7 Q Well, you've been -- you've had to testify in
8 court as a detective, right?

9 A Yes.

10 Q And sometimes you've been cross-examined about
11 your police reports, right?

12 A Yes.

13 Q And you knew that if your police reports were
14 thorough and well-documented, then there would be less
15 to cross-examine you on, right?

16 A Yes.

17 Q But if you left holes in your police reports,
18 things that were mentioned but not followed up on, then
19 that would be an area where you might be cross-examined
20 on. Why didn't you do this, or why didn't you do that?
21 Right?

22 A Possibly. Yes.

23 Q And so you knew it was important to document
24 all of the leads that you followed so that later on
25 people would know what happened with those leads,

1 correct?

2 A Typically. Yes.

3 Q You also knew that, you know, supervisors might
4 review your reports, and unless you wrote down what
5 leads you followed up on, they wouldn't know whether the
6 leads had been followed up on or not, right?

7 A Yes.

8 Q And so your reports were a way to communicate
9 with your supervisors; is that right?

10 A Yes.

11 Q And, likewise, you also wanted to let your
12 fellow detectives know what leads had been followed up
13 on and what leads hadn't been followed up on, right?

14 A Yes.

15 Q And so your report served as a way to
16 communicate to your fellow officers what had been done
17 in an investigation, right?

18 A Yes.

19 Q You also understood that your police reports
20 would be provided to the prosecution if there is a
21 prosecution of any of the suspects in your case, right?

22 A Yes.

23 Q And that the prosecution would rely on your
24 police reports to know what happened during the course
25 of investigation, right?

1 A Yes.

2 Q And that your reports should be tendered if
3 requested or shown to the defense attorney representing
4 the accused, right?

5 A On the police departments side, no. I don't
6 know about that, sir.

7 Q From the prosecution, right?

8 A From the prosecution -- yes.

9 Q And so you understood it was important not only
10 to write down the information that was good for your
11 prosecution, but also to write down the information that
12 might be exculpatory, right?

13 A Sir, we presented the case with the information
14 that we had.

15 Q And so you would write down the stuff that was
16 both good for the prosecution and bad for the
17 prosecution, right?

18 A No, sir. We would write what we had whether it
19 was good or bad. Gave them the decision.

20 Q And you would sometimes take handwritten notes,
21 correct?

22 A Yes.

23 Q What would you do with your handwritten notes
24 after you -- after you created them?

25 A After I made my supplemental or my statements

1 from those handwritten notes, I would dispose of them.

2 Q How would you dispose of them?

3 A Threw them away. Throw them in the trashcan.

4 Tear them up.

5 Q Did somebody tell you to throw away your notes?

6 A No.

7 Q Why did you throw away your notes?

8 A That's what I do.

9 Q Did anyone else throw away their notes?

10 A That I know of, I don't know.

11 Q You don't know if anybody else threw away their
12 notes?

13 A I don't know, sir, what they do.

14 Q What's that?

15 A I don't know what anybody else does with their
16 notes.

17 Q Well, when you created your supplemental
18 reports, you would put them in a file, right?

19 A Yes.

20 Q Were you ever told there is a limit to how many
21 things can go in the file?

22 A No.

23 Q Sometimes you put a ton of paper in the file,
24 right?

25 A Yes.

1 Q And so was there anything preventing you from
2 placing your handwritten notes in the file with your
3 reports?

4 A I guess it's to the individual. No. There is
5 nothing preventing you from doing that.

6 Q Did anyone tell you that it was up to you, your
7 choice, whether to destroy your notes or retain them in
8 the file?

9 A No.

10 Q Did you start out keeping your notes and then
11 one day start disposing of them?

12 A No.

13 Q What led -- why did you choose to dispose of
14 your notes?

15 A My choice.

16 Q Right. But why?

17 A I would make my supplement -- make my report,
18 and then I would get ride of my notes.

19 Q I understand that's what you did. I am trying
20 it find out why you did that.

21 A I cannot give you a reason, sir. That was what
22 I did.

23 Q And it wasn't based on what somebody else did.
24 It was just based on your own choosing?

25 A On my own -- on my own volition. Yes.

1 Q Okay. When you would interview -- interview
2 witnesses, sometimes witnesses tell you the truth, and
3 sometimes they might give you false information, right?

4 A True.

5 Q And sometimes the false information might be an
6 innocent mistake of memory, right?

7 A I don't know, sir.

8 Q I'm just asking you. Sometimes that happens,
9 right? That somebody makes a mistake and they forget
10 something, and they end up telling you something that
11 isn't true, right?

12 A If -- if they tell me then and there that,
13 "Hey, look. I made a mistake. This is what I said or
14 this is what I meant to say." Then I would say yes.

15 Q Defendant Marquez, that's not what I'm asking.
16 Let -- let me put it this way. You don't know when
17 somebody is giving you false information if it's because
18 it's an innocent mistake or if it's an intent to deceive
19 the police, right?

20 A That's correct.

21 Q All right. So you want to try and investigate
22 as a detective to find out whether the information
23 they're providing you, whether it's correct or not, and
24 if it's not correct, the reason why, right?

25 A Yes.

1 Q And so one thing you do is you want to know
2 when you talk to a witness at a later point if they
3 changed their story, right?

4 A Yes.

5 Q And something that's helpful to determine
6 whether they change their story is your notes from the
7 first time you talked to them, right?

8 A Yes.

9 Q Because sometimes in an investigation, a fact
10 that doesn't seem relevant at the time, later on turns
11 out to be relevant, right?

12 A Yes.

13 Q And you know that from your experience as a
14 police detective. Sometimes something that you ignored
15 initially becomes very important later on, right?

16 A Yes.

17 Q And so sometimes it's hard to know what
18 information to include in your report, because you don't
19 know what's going to be relevant at a later time, right?

20 A Yes.

21 Q And so the only way to be able to preserve all
22 of the information that you gather in writing is to
23 preserve your notes, right?

24 MR. MARTINEZ: Objection. Vague.

25 A No.

1 Q Well, when you create your supplemental
2 reports, do you type out your notes word for word?

3 A Off my notes, not word for word. I relay
4 what's on the notes, and then I throw away the notes.

5 Q Okay. How do you choose what of your notes to
6 include in your reports?

7 A I don't choose them, sir. Whatever I have on
8 the notes is what goes in my work report. Work product.

9 Q Okay. So you -- because you write very
10 thorough reports. Is that what you're saying?

11 A No, sir.

12 Q Well, then how are you sure that what's written
13 on your reports gets into your police reports?

14 A That's what I'm saying. If it's on the notes,
15 it goes on the police report. You asked.

16 Q Did you ever ask anyone what you should do with
17 your notes?

18 A No.

19 Q Did you ever keep notes at home?

20 A No.

21 Q Do you ever keep police reports at home?

22 A The only police reports that I had was the ones
23 that were given to me by district attorneys which I
24 turned over to my attorney.

25 Q Which reports were given to you by the distinct

1 attorney?

2 A My supplements to the program. My supplements
3 that I had taken. References statement.

4 Q And when was it they were given to you?

5 A At the trial. The verdict trial.

6 Q The writ hearing?

7 A Yeah.

8 Q Okay. Would you carry around a copy of the
9 file with you?

10 A No.

11 Q Where would you put your reports after you
12 submitted them?

13 A In a case file.

14 Q Where was the case file stored?

15 A It was kept in the crimes against persons
16 office.

17 THE REPORTER: Kept in the what?

18 (Simultaneous speakers)

19 Q Where in the crimes against persons office?

20 A Sometimes at my desk. Sometimes at another
21 detective's desk.

22 Q Okay. And then when it was kept at your
23 desk -- well, strike that. When you were the case
24 sergeant, would you keep the file at your desk?

25 A Basically. Yes.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q And then would you ever turn that file over to
2 anyone else?

3 A At the end of the investigation, yes.

4 Q All right. So at the end of the investigation
5 how would you determine -- or strike that.

6 Where would you give the file at the end of the
7 investigation?

8 A We give to a supervisor and then from there to
9 the district attorneys office.

10 Q All right. So up until the end of the
11 investigation, you would have control over that file,
12 right?

13 A Basically. Yes.

14 Q There is nobody logging what went into that
15 file or what came out of that file until the end of the
16 investigation, right?

17 A No. It's not correct.

18 Q Tell me where -- where I'm going wrong.

19 A Some detectives would make their statements,
20 and they would put it in there themselves, or they give
21 it to me so that I could put it in there. Either or.

22 Q Okay. But then you would have custody of that
23 file, right?

24 A Correct. Correct.

25 Q And nobody else would know the full contents of

1 that file except for you, right?

2 A I -- I don't know, sir. If anybody would read
3 it, I'm talking about the detectives investigating it.

4 Q Did you deal with jailhouse informants when you
5 were a detective?

6 MR. MARTINEZ: Objection. Vague.

7 A Not necessarily, no.

8 Q Well, you understood that people who were
9 facing criminal charges might want to get help on those
10 criminal charges by assisting the police, right?

11 A Yeah.

12 Q And no matter how much money you had, you can't
13 make a criminal charge go away, right?

14 A [indiscernible]

15 THE REPORTER: What?

16 Q And so you understood that when you were a
17 detective, you had to be very careful with information
18 coming from people who were facing their own criminal
19 charges, right?

20 A Yes.

21 Q Because they might be trying to get help on
22 their own case in exchange for information on somebody
23 else's case, right?

24 A Possibly.

25 Q Sure. And so you would want to corroborate

1 whatever information was being provided to you from a --
2 a person who is facing their own charges, right?

3 A Yes.

4 Q You want to know information or you want to
5 know the circumstances of how they learned the
6 information, right?

7 A Yes.

8 Q And you want to know all the things we talked
9 about before, you know, with the -- when they learned
10 the information, where they learned the information, who
11 was present when they learned the information, right?

12 A Yes.

13 (Exhibit No. 3 was marked for identification.)

14 Q All right. I want to ask you about the
15 document -- I want to know how you -- your -- your
16 documents were created back in 1993. And to do that,
17 I'm just going to show you a sample report that we'll
18 mark as Exhibit No. 3.

19 All right. Do you recognize this as an El Paso
20 Police Department supplemental report?

21 A Yes, sir.

22 Q And so the information at the top, would you
23 have to type in this information, or was this already
24 pre-generated?

25 A It -- they would have to type the -- the

1 information that's typed in there, we had to generate.

2 We had to type it in.

3 Q Okay. So you would type -- so there would be
4 fields that were set up and then you would type in the
5 information such as the time and the crime and that kind
6 of stuff?

7 A Correct.

8 Q All right. And then the narrative portion,
9 that would be available for you to type in, correct?

10 A Correct.

11 Q And I'm sorry. This is kind of small. All
12 right. And then down at the bottom there would be --
13 where it says reporting officer, would this information
14 next to reporting officer, would you type that in or
15 would that be generated by the computer?

16 A That would be generated by that officer.

17 Q Meaning that officer would type that or -- or
18 what do you mean?

19 A The reporting officer that would then be
20 Acosta. His ID number I guess and then approving
21 officer is also Mr. Acosta. Whoever processed this.

22 Q And so would Officer Acosta have to type in his
23 name as reporting officer?

24 A Yes, sir. I believe so.

25 Q All right. Then on the right where it says,

1 dates -- you know, the report -- the report date,
2 April 11th, 1993 and the time. Would these fields be
3 generated by the computer?

4 A You know, I would not know who generates those
5 times, sir, or the dates.

6 Q All right. You don't remember?

7 A I don't know who generates them.

8 Q Okay. Would you have to type those in or would
9 that be all done by the computer?

10 A I believe it's done by the computer.

11 Q Okay. All right. Did you know Danny Villegas
12 before the murders of Robert England and Armando Lazo?

13 A No, sir.

14 Q What about David Rangel? Did you know him
15 before the -- the murders of England and Lazo?

16 A No.

17 Q What about Marcos Gonzalez? Did you know him
18 before the murders of England and Lazo?

19 A No.

20 Q What about Rodney Williams? Did you know him
21 before the murders of England and Lazo?

22 A No.

23 Q What about Fernando Lujan, known as Droopy?
24 Did you know him before the murders of Lazo and England?

25 A No.

1 Q And before the murders of Lazo and England, did
2 you know Popeye or Enrique Ramirez?

3 A No.

4 Q Before the murders of Lazo and England, do you
5 know who Danny Villegas hung out with?

6 A No.

7 Q Do you know how you got assigned to investigate
8 the England and Lazo murders?

9 A By the supervisor that assigned me.

10 Q Who?

11 A Sergeant Johnson.

12 Q Do you know why Sergeant Johnson assigned this
13 case to you in particular?

14 A No.

15 Q Was it your understanding it was just your
16 turn, or was it your understanding that Sergeant Johnson
17 was using some type of criteria to determine who to
18 assign the case to?

19 A When I [indiscernible], he just said I was
20 going to handle it. Not any criteria.

21 Q I want to show you some testimony from the
22 second trial. All right. This is your testimony
23 from -- well, the -- this testimony. I'll scroll down.

24 MR. MARTINEZ: Can you go back up, Russell? I
25 missed the date or do you --

(Simultaneous speakers)

MR. MARTINEZ: Oh, there it is. There is it.

MR. AINSWORTH: Yep. August 23rd, 1995.

MR. MARTINEZ: Got it. Thank you.

Q And I'm going to show you -- I think it's pages here -- all right. This is on page 484 of that transcript, line 6 through 10. It's -- you're asked the question, "Now, you say the young man named Michael Johnston did tell you, 'Yes, I shot the guy'." Your answer is, "Correct."

"In reference to Electric Street?" And then you just indicated. Do you see that?

A Yes, sir.

Q And were you indicating yes in -- when asked, "In reference to Electric Street"?

A I don't recall, sir, to be honest.

Q All right. But is it a fair assumption to make because the only case -- the only murder you were questioning Michael Johnston about was the Electric Street murder, right?

A As I recall, yes. I was there.

Q Well, were you questioning John -- Michael Johnston about any murders other than the Electric Street murders?

A No, sir.

1 Q Okay. So Michael Johnston told you, "I shot
2 the guy", right?

3 A I don't recall if he told me directly, or I may
4 have heard it from somebody, but I'm going to say, yes.
5 I don't recall.

6 Q Okay. Because your memory of the events that
7 happened in 1993 were a lot fresher in 1995, right?

8 A Because we talked to a lot of people so I don't
9 --

10 Q Yeah.

11 (Simultaneous speakers)

12 Q I -- I understand but back in 1995, you had
13 much better memory for what happened in 1993, correct?

14 A I don't know.

15 Q Do you think your memory today is better of the
16 events that occurred back in 1993 than it was in 1995?

17 A No.

18 Q Okay. So you agree that, generally speaking,
19 your memory was better back in 1995 than it is today,
20 right?

21 A Yes.

22 Q Okay. And in 1995, you testified that a young
23 man named Michael Johnston told you, "Yes, I shot the
24 guy", right?

25 A Yes.

1 Q Okay. And -- and so do you trust that that's
2 what happened? That Michael Johnston told you, "Yes, I
3 shot the guy"?

4 A Yes.

5 Q Okay. How did you come to be in contact with
6 Michael Johnston and Jacob -- forgive me. I don't know
7 how to pronounce his last name. Jauregi?

8 A I think it was --

9 Q Jauregi?

10 A Jauregi.

11 Q Jauregi?

12 A Jauregi. I -- I don't recall if it was we
13 brought him into the office or we had him brought in by
14 somebody else, but I don't recall exactly how we
15 [indiscernible] --

16 Q Okay. Why did you want to talk to Mike
17 Johnston?

18 A I don't recall if he was named as a possible
19 witness or having something to do with the case, so we
20 needed to talk with him.

21 (Exhibit No. 4 was marked for identification.)

22 Q Let me show you an exhibit. We'll mark this as
23 Exhibit No. 4. This is a document Bates numbered on
24 this -- this version is DA 34625, 627, and 629.

25 Is that your signature at the bottom? Or does

1 your signature appear on the third page of Exhibit 4?

2 A I -- I don't see my signature at all, sir. I
3 don't see my signature there -- there at the bottom of
4 the page.

5 Q Okay. All right. Do you remember Robert Wayne
6 Hall?

7 A Yes, sir --

8 MR. MARTINEZ: I'm sorry. I'm sorry, Russell,
9 you're -- you're -- the sound has kind of degraded in
10 the last few minutes. Will you just try to speak up a
11 bit?

12 Q Certainly. Do you remember Robert Wayne Hall?

13 A Yes.

14 Q Who was Robert Wayne Hall?

15 A He was a somebody in Chaparral, New Mexico, who
16 I believe told us that he had information, and we went
17 up to -- to talk to him.

18 Q Okay. And so do you see where it says, "I am
19 giving this statement to Detective Alfonso Marquez of
20 the El Paso Police Department"?

21 A Yes.

22 Q All right. Is this your handwriting on Exhibit
23 4?

24 A Yes.

25 Q All right. And so this is -- somebody says, "I

1 called the sheriff's department this morning after I
2 told Mrs. somebody about the information I had. From
3 there, she took me to the principal's office. Mr. -- I
4 think it's Gurrola -- and from there we called the
5 sheriff -- the sheriff office." Do you see that?

6 A Yes.

7 Q And then it says, "Detective Marquez has asked
8 me what information I have, and I have told him that I
9 will tell him the truth." Do you see that?

10 A Yes.

11 Q All right. So he's -- this is -- Hall gives
12 information about Mike Johnston, right?

13 A I'm sorry, sir. Repeat it please.

14 Q Hall gives you information about Mike Johnston,
15 correct?

16 A Yes.

17 Q And in the written statement, Hall is reporting
18 that Mike came up to him and said, "Man, you want to
19 hear something cool?" He then said, "Man, we killed two
20 people last night. Me and Jake. I answered with, no.
21 He then said, yeah. We did a driveby in El Paso. He
22 told me what kind of car and guns they used but I don't
23 remember. I thought he was kidding. I then asked him
24 what happened and he said, we -- we chased two others
25 that got away until they got to a phone and we shagged

1 **ass." Do you see that?**

2 A Yes.

3 Q And that statement was in quotes, right?

4 A Say again, sir, please.

5 Q That statement was in quotes, right? Or
6 specifically where he says, "We chased two others that
7 got away until they got to a phone and we shagged ass."
8 That statement is in quotation marks, right?

9 A Yes.

10 Q And when you use quotation marks, that means
11 you're repeating word-for-word verbatim what the witness
12 is telling you; is that right?

13 A Yes.

14 Q Okay. And then going on to the third page of
15 Exhibit 4. Hall tells you, "There is a friend of
16 Johnston who does own some guns", and it says, ".20
17 gage, .440, .22 handguns, and .22 rifle." Do you see
18 that?

19 A Yes.

20 Q So Hall is telling you that a friend of
21 Johnston has a .22 handgun and a .22 rifle, right?

22 A You're saying that Hall was telling us,
23 correct?

24 Q That's right.

25 A Yes.

1 Q And you know from review of your testimony and
2 the reports that the England and Lazo murders were
3 perpetrated with a .22 caliber handgun or a .22 caliber
4 gun I should say?

5 A Yes.

6 Q And we don't know if it's a handgun or a rifle
7 or what kind of gun it is, right?

8 A All from what we did, it was a handgun. Not a
9 rifle.

10 Q And where are you recollecting that from?

11 A From a statement that I had taken from
12 Villegas.

13 Q I see. Did anybody from the crime lab tell you
14 that it was a handgun that was used to commit the crime
15 as opposed to a different type of .22 caliber weapon?

16 A No.

17 Q Do you believe that Danny Villegas is guilty of
18 murder?

19 A Yes.

20 Q And why do you believe he's guilty of murder?

21 A Through our investigation.

22 Q What about your investigation?

23 A The statement that he gave us was not known to
24 the public. It was not known to the media, and stuff
25 that he had in the statement coincided with what

1 happened out there that night to the best of our
2 knowledge.

3 Q And so that's what we were talking about
4 earlier today. You wanted to know how Danny Villegas
5 knew information that was not known to the public,
6 right?

7 A Correct.

8 Q What was the information that Danny Villegas
9 knew that was not known to the public?

10 A The direction of one of the victims ran, to
11 where he ran, the shots that were fired, the location
12 where they were at, and I'd have to look at the rest of
13 it, sir.

14 Q So it wasn't released to the public that one of
15 the victims ran towards the house and the other two
16 victims ran away towards some businesses looking for a
17 phone, right?

18 A That's not what I recall.

19 Q What do you recall?

20 A Correct. One of the witnesses ran to a house.
21 The other two witnesses they said ran behind a -- behind
22 a dumpster, and none of that was given out to the -- the
23 media or we made it public. Or [indiscernible] we
24 didn't.

25 Q And that was important to you because you

1 had -- if somebody knew that one victim ran one way and
2 the other two victims ran another way, you would want to
3 know how they knew that information, right?

4 A Correct.

5 Q Okay. So Mike Hall [sic] told you -- sorry.
6 Robert hall told you that Mike Johnston told him that
7 they, "Chased two others that got away until they got to
8 a phone and we shagged ass." Do you see that?

9 A Yes.

10 Q And you remember from your interview with Jesse
11 Hernandez that two of the victims ran off and were
12 chased by the car, right?

13 A Yes.

14 Q And so when you learned this information from
15 Robert Hall, this piqued your curiosity, right, as a
16 police detective?

17 A Yes.

18 Q You wanted to know how the heck did Mike
19 Johnston know the day after the murders, so really later
20 that same day, that the murderers chased two of the
21 victims until they got to a phone and then they shagged
22 ass?

23 A I don't remember the -- the two victims that
24 ran saying they got to a phone.

25 Q Fair. You remember that they were looking for

1 a phone, right?

2 A No, sir. I do not remember.

3 (Exhibit No. 5 was marked for identification.)

4 Q Okay. All right. Let me show you what we'll
5 mark as Exhibit No. 5. All right. This is a statement
6 from Juan Carlos Medina. Do you see that?

7 A Yes.

8 Q Okay. So Medina was one of the surviving
9 victims, right?

10 A Yes.

11 Q And let's take -- and this is -- sorry. This
12 Bates numbered -- Exhibit 5 is Bates numbered Defense
13 City 15737 to 15738. And taking a look at the second
14 page of Exhibit 5. It says, "I then began to run
15 towards Fairbanks where there is a Blockbuster Video.
16 While I was running, Jesse passed me up and we hid
17 behind a dumpster by Blockbuster. We hid almost ten
18 minutes and then we tried to go to the Blockbuster and
19 Subway to call 911, but the businesses were closed." Do
20 you see that?

21 A Yes.

22 Q Okay. Did you want to know how Mike Johnston
23 knew that two of the four victims had been chased by the
24 car and ran off together?

25 A They were interviewed, sir. I mean, I don't

1 know what the interview came out of. I interviewed them
2 or somebody else did.

3 Q I understand you interviewed them. What I'm
4 trying to find out is did you want to know from Mike
5 Johnston how he knew that two of the victims ran off and
6 were chased by the car?

7 A Yes.

8 Q Okay. What did Mike Johnston tell them -- and
9 then you interviewed Mike Johnston, correct?

10 A I don't recall if I did or -- if I did, we
11 spoke to a lot of people there. I can't recall if I
12 spoke with him, myself, for a length of time.

13 Q Where would we look to determine who it was who
14 questioned Mr. Johnson?

15 A Either the statements file or the supplement
16 files.

17 THE REPORTER: Either the what files?

18 A The statements or supplements.

19 Q So there should be some documented reports
20 regarding Johnston's interview, right?

21 A Correct.

22 (Exhibit No. 6 was marked for identification.)

23 Q All right. Let me show you what we'll mark as
24 Exhibit No. 6. All right. This is a document Bates
25 numbered DA 34 -- 340 -- 364. Excuse me. All right.

1 Do you see here -- well, this is in regard to Jacob and
2 Mike Johnston. Do you see that?

3 A Yes.

4 MR. JEEP DARNELL: Russell, before you get
5 going on a string. I -- Eric and myself need to break
6 in no later than ten minutes to walk over to the Federal
7 Courthouse. We have an in-person hearing.

8 MR. AINSWORTH: I'm sorry. I didn't know it
9 was in person. Okay.

10 MR. JEEP DARNELL: Yes. I appreciate that.

11 Q All right. Do you see that -- talks about the
12 juveniles were taken to the YSD. Is that the old name
13 for JIS or the new name for JIS? The Youth Services
14 Division?

15 A Yes, sir.

16 Q Where they're logged in and then taken to the
17 JPD?

18 A Correct.

19 Q And then the intake worker reviewed the
20 paperwork for them, and they both said that they wanted
21 to give written statements, right?

22 A Correct.

23 Q And then at about ten -- 10:30, the juveniles
24 were taken before Judge Horkowitz for their magistrate
25 warnings, right?

1 A Correct.

2 Q They were then returned to the YSD office where
3 CAP detectives proceeded to take their written
4 statements?

5 A Correct.

6 Q Okay. Where are those written statements from
7 Mike Johnston and Jacob?

8 A At this time, I don't know, sir.

9 Q Okay. They would have been in your file,
10 right?

11 A Yes.

12 Q You brought both boys, Mike Johnston and Jacob,
13 to the magistrate, right?

14 A Correct.

15 Q And so is there any reason that you brought the
16 boys to the magistrate judge that you would not have
17 then interviewed them?

18 A I seem to recall that when we tried to -- after
19 that, we tried to interview them, and we may or may have
20 not taken any because there was four or five different
21 stories from each one, and we determined that they were
22 not being truthful as to their involvement in it. I
23 believe that's it. I'm not sure. So no. So I don't
24 believe confessions or statements were taken.

25 Q Okay. Tell us how you -- how you questioned

1 **Johnston and Jacob. Like, did --**

2 A The same.

3 **Q -- You just ask them, "Tell us what happened"?**

4 A The same. I tried to get rapport with them. I
5 ask them to verbally let me know what had happened, and
6 then if we -- if it's correct more or less, we take a
7 statement, but I remember -- and I want to say it was
8 both of them that gave us different completely stories
9 as to what happened after the -- after what -- I can't
10 think of his name -- had -- had reported.

11 **Q All right. And so what were the four different**
12 **stories -- four or five different stories that came in?**

13 A I don't recall at this time, sir. It was just
14 locations -- the location and a bunch of other stuff
15 that I don't recall exactly right now.

16 **Q All right. You didn't create a report**
17 **regarding what Johnston and Jacob told you, right?**

18 A I don't think so, sir.

19 **Q You've never seen a report from anybody**
20 **documenting what they told you, right?**

21 A I don't recall.

22 **Q Are you aware that the city does not have a**
23 **copy of any statements from Mike Johnston?**

24 A I don't know.

25 **Q Did Mike Johnston's mother tell you not to**

1 question Mike Johnston without her presence?

2 A Not that I recall.

3 Q Did Mike Johnston's mother give you a card
4 indicating that Mike Johnston would invoke his
5 constitutional rights to silence and to an attorney?

6 A Not that I recall.

7 Q Did you scream at Mike Johnston?

8 A Not that I recall, sir.

9 Q Did you accuse Mike Johnston of murdering
10 England and Lazo?

11 A Not that I recall.

12 Q Well, are you saying you don't -- you may have
13 done that, but you don't recall, or are you saying, no,
14 you didn't?

15 MR. MARTINEZ: Objection. Vague.

16 A I'm saying that the -- after all the murder or
17 they weren't or the statements I had been involved with,
18 I may have asked, "Did you kill this person? Did you do
19 this? Did you do that?" But it's only part of asking.
20 You have to ask.

21 Q Right. So not accusing?

22 A Not accuse. No, sir.

23 Q And what about screaming? Are you saying you
24 may have screamed at him but you just don't remember
25 but, or are you saying, no, that didn't happen?

1 A Again, sometimes with the -- the nature of the
2 amount of time that we spend, we may lose it here and
3 there, but -- and we may raise our voice, but I do not
4 recall screaming or hollering, but we may have raised
5 our voice.

6 Q Did you raise your voice with Johnston?

7 A I don't recall, sir.

8 Q All right. You said you may have raised your
9 voice with Johnston?

10 A May have.

11 Q All right. Did you imply to Johnston that he
12 would be sexually assaulted in jail if he didn't
13 cooperate?

14 A No, sir.

15 Q Did you tell him that he knows what happens in
16 there about jail?

17 A No, sir.

18 Q Who was responsible for documenting what
19 Johnston and Jacob told you?

20 A More than likely whoever spoke with him.

21 Q And that was you, right?

22 A I probably did, sir.

23 Q All right. I'm getting nervous about the time,
24 and I know you are. So why don't we go off the record
25 here, and then how are you going to let us know when to

1 come back on?

2 MR. JEEP DARNELL: You tell me. I didn't know
3 if anybody was going to eat lunch. I mean, I would
4 guess our hearing is at 20 minutes, so if we can have an
5 hour and --

6 MR. AINSWORTH: That sounds good. Okay. Why
7 don't we reconvene at 1:45, and email us like at 1:30 if
8 that's not going to work. Okay?

9 MR. JEEP DARNELL: That works. All right.

10 THE VIDEOGRAPHER: Okay. We're off the record.
11 It is 12:43 p.m.

12 (Recess from 12:43 p.m. to 1:51 p.m.)

13 THE VIDEOGRAPHER: We are back on the record.
14 The time is 1:51 p.m.

15 Q All right. Mr. Marquez, did you get a chance
16 to take a break and get some lunch?

17 A Well, I -- I don't [inaudible] --

18 Q I'm sorry. We can't hear you.

19 A I don't like to eat much.

20 Q All right. All right. Is there anything
21 affecting your ability to truth --testify truthfully and
22 accurately this afternoon?

23 A No.

24 Q All right. Before we broke, you agreed with me
25 that Mike Johnston had told Robert Hall some non-public

1 crime scene facts, right?

2 A Correct.

3 Q And that Mike Johnston had told you that he
4 shot the boys, right?

5 A Yes.

6 Q And we have a report from Charlie Ortega saying
7 that written -- handwritten statements -- or sorry.
8 Written statements were taken from both Jacob and Mike
9 Johnston, right?

10 A I would have to look at that if you show it to
11 me again.

12 Q Sure. I'll show it to you again. We marked as
13 Exhibit 6, so I'll just pull it up. All right. Showing
14 you again. This is a report by Officer Ortega on --
15 started on April 15th at 11:19, and he writes in the
16 report regarding -- I'll just scroll up to orient us.
17 This is about Jacob and Mike Johnston. And then at
18 approximately 10:30 the juveniles were taken before
19 Judge Horkowitz for their magistrate warnings without
20 the presence of detectives. They were then returned to
21 the Youth Services Division office where CAP detectives
22 proceeded to take their written statements. Do you see
23 that?

24 A There is a, "Meeting is being recorded by
25 [inaudible]" blocking the --

1 MR. MARTINEZ: Oh, sorry. Hold on. That's my
2 fault. Give me a sec.

3 MR. AINSWORTH: I'm sorry. Could the witness
4 not hear?

5 MR. MARTINEZ: No. He couldn't -- he couldn't
6 see. He could hear you. He couldn't see the document
7 you were showing because we had a window in a window.

8 Q Not a problem. Okay. Can you -- can you see
9 the document now, sir?

10 A Yes.

11 Q Taking a look at Exhibit 6 and I'll just --
12 showing you this is the report about the interviews with
13 Jacob and Mike Johnston. This is Ortega's report as you
14 can see from the bottom. Do you see that, sir?

15 A Yes.

16 Q And then it says at approximately 10:30, the
17 juveniles were then taken before Judge Horkowitz for
18 their magistrate warnings. Do you see that?

19 A Yes.

20 Q They then returned to the Youth Services
21 Division office where Crimes Against Person detectives
22 proceeded to take their written statements. Do you see
23 that?

24 A Yes.

25 Q All right. And so we've got a report from

1 Ortega saying that written statements were taken from
2 Jacob and Mike Johnston, right?

3 A Yes.

4 Q All right. And then we -- and so those written
5 statements would detail what Mike Johnson -- what Mike
6 Johnston's explanation was for why he had non-public
7 crime scene facts.

8 MR. ALMANZAN: Objection. Calls for
9 speculation.

10 MR. MARTINEZ: Objection. Vague.

11 A No statements were taken I believe.

12 Q How do you know that no statements were taken?

13 A At the time we were getting five different
14 stories. Each one -- every time we spoke to -- like I
15 said before, I let them tell me what happened. We would
16 go over it again, and the story would change, and about
17 five different times, the story would change. So we
18 made the opinion and conclusion that they were dragging
19 out and [indiscernible]

20 Q Who is we?

21 A Myself and -- I guess I made the decision.

22 Q Okay. Because did this happen after midnight?

23 A I don't recall, sir, the hours.

24 Q All right. Let me show you -- I'm going to
25 show you that exhibit again. Exhibit No. 6. As -- at

1 bottom of Ortega's report it says, "At this point,
2 midnight" -- well, strike that. It says, "They were
3 then returned to the Youth Services Division office
4 where CAP detectives proceeded to take their written
5 statements. At this point, midnight, Detectives Ortega,
6 Moreno, and Sergeant Meza concluded assistance for CAP."
7 Do you see that?

8 A Yes.

9 Q So after that point, it was just you alone; is
10 that right?

11 A Myself and possibly -- it had to be another
12 detective. I wouldn't ask myself.

13 Q Okay. And so do you know why Ortega wrote that
14 CAP detectives proceeded to take their written
15 statements as opposed to, "We're going to take
16 statements", or, "We're thinking about taking statements
17 from them"?

18 MR. ALMANZAN: Objection. Lacks foundation.
19 Objection. Argumentative.

20 Q You can answer, sir.

21 A I have no idea why Detective Ortega and Meza
22 and Morena left. I thought maybe they thought we were
23 going to take it [indiscernible].

24 THE REPORTER: Take it where?

25 A Maybe they thought we were going to take

1 statements.

2 Q Okay. I'm going to show you a portion of that
3 testimony from September 8th, 2011, at the Writ of
4 Habeas hearing. So, again, sir, I'll show you the date
5 this is from. September 8th, 2011. And in that
6 hearing -- okay. This is page 40 of that testimony,
7 line 15. You were asked the following questions and I'm
8 going to ask you if you gave the following answers.

9 Question, "Do you remember Michael Johnston?
10 The young named, Michael Johnston?"

11 Answer, "I remember the name. I don't remember
12 anything about Michael Johnston."

13 Question, "Do you remember if you took a
14 question from him?"

15 Answer, "Sir, I don't remember if I did take
16 it."

17 Were you asked those questions, and did you
18 give those answers, sir?

19 A Did I give those answers? Yes.

20 Q And was it true back in 2011 that you didn't
21 remember anything about Michael Johnston?

22 A Correct.

23 Q And was it true that in 2011, you didn't
24 remember if you took a statement from him or not?

25 A Correct.

1 Q And so, sir, would you agree with me that you
2 don't remember today -- well, strike that. Is it true
3 that you can't say for certain today you did not take a
4 statement from Michael Johnston?

5 A If there is not any in the file, I did not take
6 a statement from him.

7 Q Because if a statement was taken from him and
8 then it was removed from the file, that would be totally
9 wrong, right?

10 A If -- yes.

11 Q Yeah. That would be a constitutional violation
12 if a statement from Michael Johnston where he says, "I
13 shot those boys", and included non-public crime scene
14 facts in it was removed from the file, that would be --
15 that would violate the constitution, right?

16 MR. MARTINEZ: Objection. Calls for
17 speculation. Lack of foundation.

18 A Yeah.

19 Q And so the only reason you're saying that you
20 didn't take a statement from Michael Johnston is because
21 you don't see one in the file; is that right?

22 A No.

23 Q Then what are you basing your statement on that
24 you didn't take a statement from Michael Johnston?

25 A I did not take a statement from Michael --

1 Michael Johnston because he gave us five different
2 versions. After that, I, in my own mind, made up my
3 mind that he was dragging out in Chaparral, New Mexico.

4 Q So do you have a memory of your conversation
5 with Michael Johnston?

6 A No. Not as to exact memory. No.

7 Q Well, do you have any memory of your
8 conversation with Michael Johnston?

9 A Just that I recall that he gave us five
10 different versions, different cars, different weapons,
11 different locations. That's the only thing that I
12 remember.

13 Q What did he look like?

14 A I don't know, sir.

15 Q Was he white? Latino? Black?

16 A No. I -- I don't recall. I'm not going to
17 pick one, but I don't recall what he looked like.

18 Q What size was he?

19 A I don't recall, sir, if he was tall, short.

20 Q All right. So if you didn't take a written
21 statement from Michael Johnston, then you would document
22 in the report what he told you, right?

23 A Not necessarily, sir. I -- I can't really say
24 that.

25 Q If you have somebody who told you that he shot

1 the victims in this case, and that person has told
2 somebody else that he had gotten public details to the
3 crime, don't you think those are things that you should
4 write down?

5 A Yes.

6 Q Did you write them down in your notes?

7 A No, sir.

8 Q How do you know you didn't write them down in
9 your notes?

10 A Because I didn't write them down in my notes.
11 I had Mr. Johnston picked up I believe.

12 Q Well, but do you have a memory of Michael
13 Johnson telling you that he killed the victims, and he
14 knew non-public crime scene facts, and you intentionally
15 didn't write those things down?

16 A Michael Johnston didn't tell me the facts that
17 you're talking about. Those came from the gentleman
18 Hall at the -- Chaparral.

19 Q Okay. So what did Michael Johnston say when
20 you asked him how did you know these facts to tell
21 Mike -- Robert Hall?

22 A I did not ask him.

23 Q Okay. Earlier today I thought you said you
24 would want to know how Michael Johnston knew non-public
25 crime scene facts, right?

1 A Yes.

2 Q So why didn't you ask Michael Johnston, how did
3 you know that two people -- the two victims ran together
4 and were chased by the car?

5 A I did not tell them. I couldn't tell them
6 something -- when I talked to him, I asked him, tell me
7 what happened. He gave me five different stories,
8 neither one which matched.

9 Q And -- and so part of that conversation you
10 started to get a sense that this guy was full of shit.
11 He wasn't giving any truthful information, right?

12 A He wasn't being truthful.

13 Q So why didn't you then ask him, "Well, Michael
14 Johnston, how did you know that two of -- of the victims
15 were being chased by the car?" Because maybe Michael
16 Johnston was told by one of his friends who committed
17 the murder what happened, right?

18 A Right.

19 Q And so you want to know where he got that
20 information from, right?

21 A Yes.

22 Q And so why didn't you then ask Michael Johnston
23 what -- where did he get that information from?

24 A I don't know, sir.

25 Q Did you ask Michael Johnston why he was telling

1 you that he shot the two guys when he wasn't really --
2 when it seemed to you he wasn't really being truthful?

3 A I may have told him. I don't recall.

4 Q Do you think he was covering for somebody else,
5 and that's why he was saying that he was the one who did
6 it?

7 A I could not say what was Michael Johnston's
8 mind. No.

9 Q Okay. So is this the only false confession
10 that you've ever received in your career was from
11 Michael Johnston?

12 A No.

13 Q What other false confessions have you received
14 in your career?

15 A I'm not saying confessions. In this particular
16 case, there were a lot of people that were taking credit
17 for it, bragging about it. We investigated. We cleared
18 them. As far as my career, I don't know.

19 Q Well -- okay. So is this the only false
20 confession you can recall receiving?

21 MR. MARTINEZ: Objection. Vague.

22 A I don't -- I only received a false confession
23 from Mr. Johnston.

24 Q Well, was it truthful when he said that he shot
25 the victims?

1 A Apparently not.

2 Q So then that was false, right?

3 A Yes.

4 Q And he was confessing to shooting the victims,
5 right?

6 A He was bragging to shooting the victims.

7 Q What's the difference between bragging that he
8 shot the victims and confessing that she shot the
9 victims to you?

10 A If -- if I'm telling you, hey, you know, I shot
11 him [indiscernible] to make me look big or make me feel
12 strong or whatever. That would be one way of saying,
13 you know what, he's bragging. Trying to make himself
14 more popular, more bigger, or whatever.

15 Q So you thought that Mike Johnston was trying to
16 brag to you that he shot the victims and make himself
17 look bigger to you?

18 A No, sir.

19 Q Then -- then help me out because I'm -- I'm
20 confused as to why he was telling you what -- what --
21 strike that.

22 What was your belief as to why Mike Johnston
23 was telling you that he killed the boys when he really
24 didn't do it?

25 A I don't know his belief, sir.

1 Q No. No. Your belief, sir. What was your
2 belief about why he was telling you that he killed the
3 boys when he didn't really do it?

4 A He was trying to act big or -- in front of
5 everybody else. Whoever was around.

6 Q Well, what about in front of -- inside the
7 police station in front of you and the other police
8 officers? Why was he telling you and the other police
9 officers that he killed the two boys and -- yeah. But
10 he really didn't do it?

11 A Sir, I don't know why. I cannot answer for why
12 he told us something that he was -- in his mind, he told
13 us that. I don't -- I cannot get into his mind to
14 figure out why did you say that.

15 Q Well, did you ask him? Did you say, "Michael,
16 can you tell us why you're telling us that you shot
17 these two boys when your stories don't -- don't add up?"

18 A I don't believe I told him that, sir.

19 Q Why didn't you -- did you want to know why he
20 was telling you that he killed the boys?

21 A Because I believe that he was bragging, and
22 that's what I may have told you -- told him that why --
23 why are you bragging? But that's about it.

24 Q All right. In any event, we can agree that you
25 should have written down what his explanation was for

1 how he -- he got the non-public crime scene facts,
2 right?

3 A Correct.

4 (Exhibit No. 7 was marked for identification.)

5 Q Okay. I want to show you what we'll mark as
6 Exhibit 7. It's a two page document. It's Bates
7 numbered Defense City 15681 and 82. And I'm going to
8 ask you, do you recognize the handwriting on this page?

9 A Yes, sir.

10 Q Whose handwriting is that?

11 A I believe it's mine.

12 Q What are these notes of?

13 A Information I received from Marcos Gonzalez.

14 Q I'm sorry. From whom?

15 A I believe on the side it says Marcos -- I think
16 it's -- scroll it up a little bit.

17 Q Scroll up?

18 A I can't see the -- I see Marcos Gonzalez.

19 Q Okay. These are notes of your conversation
20 with Marcos Gonzalez; is that right?

21 A Yeah. I don't recall if there was conversation
22 with him or -- yeah. I believe so.

23 Q Okay. And so Marcos Gonzalez, what -- what was
24 he saying to you in this conversation in which you took
25 these notes?

1 A Whatever it says on the -- on the document.

2 "No car. Went to Boomerangs."

3 Q Okay. So you said -- he told you he didn't
4 have a car or access to a car, right?

5 A Correct.

6 Q He went to Boomerangs with Danny's girlfriend;
7 is that right?

8 A Correct.

9 Q And Danny's girlfriend is Vero?

10 A Vero.

11 Q Vero. All right. And he tells you that he was
12 babysitting for Leslie; is that right?

13 A Don't know. I don't know if he was
14 babysitting, or somebody was babysitting.

15 Q Somebody was babysitting. Okay.

16 A Yeah.

17 Q Okay. All right. It says, "Friend's baby
18 mother. She was out dancing." Do you see that?

19 A Yes, sir.

20 Q They're watching, White Men Can't Jump, and
21 doesn't remember what was on TV; is that right?

22 A Correct.

23 Q So Marcos was telling you they were watching
24 White Men Can't Jump, and that they don't remember what
25 was on TV, right?

1 A Correct.

2 Q All right. It says, "Homework at his
3 apartment", right?

4 A Correct.

5 Q It says Marcos, Danny, Snapper, and Rodney were
6 at Snappers -- Snapper's friend's house; is that right?

7 A It appears. Yes, sir.

8 Q All right. Told you babysat. Snapper's friend
9 only wanted Snapper in the appointment. Went back to
10 Danny's house on Wren after movie was finished. Don't
11 remember what time we got home.

12 A Correct.

13 Q Do you see that? Okay. So -- and what are
14 these times here? 5:25 and 5:35 p.m.?

15 A Possibly the time we started and -- started the
16 taking the notes and time we started -- finished taking
17 the notes.

18 Q Okay. And what are these numbers after Marcos
19 Gonzalez?

20 A I don't know, sir.

21 Q Is this your handwriting where it says Marcos
22 Gonzalez?

23 A No.

24 Q Is that his signature?

25 A I believe so.

1 Q Okay. So Marcos Gonzalez told you that the
2 night of the murder they were babysitting for Leslie's
3 baby; is that right?

4 A Yes.

5 Q And that they were watching a movie on TV
6 called, White Men Can't Jump, right?

7 A Yes.

8 Q Did you record this information in a
9 supplemental report?

10 A I don't remember, sir.

11 Q Why did you take these notes?

12 A Because I don't recall where we were at.

13 Q I'm sorry. Could you say that again?

14 A I don't recall where we were at. That I
15 probably did not have any access to a computer or
16 typewriter.

17 Q Well, how many times did you interview Marcos
18 Gonzalez?

19 A I don't recall if I interviewed him to take a
20 statement. I recall taking notes, but I didn't -- I
21 don't recall interviewing.

22 Q Where were you when you interviewed Marcos
23 Gonzalez?

24 A I don't recall interviewing him so I don't
25 know.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q Do you know where Marcos Gonzalez was living on
2 April 21st, 1993?

3 A I don't recall or I don't know where he lived.

4 Q Do you remember he was living with Danny
5 Villegas?

6 A I don't know if he was living with him, stayed
7 in the house 24/7. I don't know that.

8 Q Exhibit --

9 THE REPORTER: What was that?

10 (Exhibit No. 8 was marked for identification.)

11 Q I'm sorry. I'm just making note to myself of
12 what the exhibits are. That was seven. And now I'm
13 going to show you eight.

14 Okay. Exhibit No. 8 is a report by Scott
15 Graves by Terri Vinson. Do you see that?

16 A Yes.

17 Q Or this is a statement by her at 10:00 a.m. on
18 April 12th. She says, "I heard Terrance telling my
19 sister about a car that Rudy Flores was driving, and he
20 described the car as being gray with rust patches and
21 the tires had a gold rim on it. Terrance said that Rudy
22 was driving the car, and he was involved in the shooting
23 of the two boys on Friday night on Electric Avenue." Do
24 you see that?

25 A Yes.

1 Q All right. So we've got Terri telling Scott
2 Graves that Terrance told her that Rudy was involved in
3 the murder, right?

4 A Can you put it up again? I don't know if I
5 read that or --

6 Q Sure. "Terrance said that Rudy was driving the
7 car, and he was involved in the shooting of the two boys
8 on Friday night on Electric Avenue." Do you see that?

9 A Yes, sir.

10 Q All right. So Terri is saying that Terrance
11 told her that Rudy was involved in the murder, right?

12 A Yes.

13 Q Okay. Then we've got what I'll mark as Exhibit
14 9 which is Tonya Vinson. This is supposed to be Tonya,
15 but it's just the second page of her [inaudible]. Do
16 you remember that -- that Tonya Vinson was -- used to
17 date Armando Lazo, the victim?

18 A No. I don't remember.

19 (Exhibit No. 9 was marked for identification.)

20 Q All right. Let's -- let me show you what we'll
21 actually mark as Exhibit No. 8 [sic]. All right. This
22 is the report by you, correct?

23 A Correct.

24 Q And it's a statement by Charles -- is it
25 Blucher?

1 A Yes, sir. I believe.

2 Q Okay. So Charles says that he heard Terrance
3 tell the girls that he knew who had shot them, meaning
4 the two guys, and "Terrance told them that it was Rudy
5 Flores and Dirt who had done the shooting on Electric
6 Street." Do you see that?

7 A Yes.

8 Q And he says, "I think that Rudy drives a Monte
9 Carlo, which is dropped, and I believe it's gray in
10 color." Do you see that?

11 A Yes.

12 Q All right. So now you've got Terrance telling
13 Terri and Terrance telling Charles that he believed Rudy
14 committed the murder, right?

15 A Yes.

16 (Exhibit No. 10 was marked for identification.)

17 Q And then let me show you what we'll mark as
18 Exhibit 9 [sic]. All right. This is another report by
19 Scott Graves regarding an interview with Terrance
20 Farrar, and here Terrance says, "I know that Rudy Flores
21 was having problems with Armando Lazo because Rudy was
22 messing with one of Armando's friends." Do you see
23 that?

24 A Yes.

25 Q "I don't know if Robert was having any trouble

1 with Rudy. Rudy has hurt a lot of people in the
2 neighborhood and has tried to hurt me several times.
3 About two weeks ago, there was a party at a friend of
4 mine's house, and his name is Derrick. Derrick lives on
5 Edgemere Street, and that is where the party was.
6 Armando Lazo and Robert England were at that party, and
7 Rudy Flores also showed up to the party with some other
8 dude, but I don't know who he was." Do you see that?

9 A Yes.

10 Q "Rudy started to mess with one of Armando's
11 friends at the party, and Armando told Rudy to leave him
12 alone. Armando and Rudy started to have a few words and
13 Rudy told Armando to take it outside and Armando walked
14 outside. I walked outside and Armando and Rudy were
15 having some words outside and are getting ready to
16 fight. I broke it up before they fought. Rudy then
17 told Armando that he was going to shoot him. I told
18 Rudy to go home, and he started to leave and said he
19 what would be back. Rudy left and then 15 minutes later
20 he came back with some of his friends, and he wanted to
21 fight Armando, but we wouldn't let Armando go outside.
22 Rudy then jumped into his gray Cougar and told Armando
23 that he was going to kill him and all the rest of us.
24 Rudy left after that and did not come back. I don't
25 know if they got into it anymore after that. I was

1 scared after that, because Rudy has tried to kill me and
2 he has stabbed at me, and his brother Javier 'Dirt'
3 Flores has shot at me before. When Rudy says he is
4 going to do something to you, then he probably will do
5 it. That is why I was scared. I told Armando to watch
6 himself after that, because of the way that Rudy is. I
7 think that Rudy Flores is the one that shot Armando Lazo
8 because of everything that had happened." Do you see
9 that?

10 A Yes.

11 Q All right. So now you want to talk to Rudy
12 Flores, right?

13 A Yes.

14 Q You want to find out if he threatened to shoot
15 the victim in your case two weeks before, right?

16 A Yes.

17 Q You want to know if he told -- and you want to
18 know if he got into a fight with the victim and had a
19 reason to fight the victim, right?

20 A If I can rephrase that. I don't -- I don't
21 think we talked about prior. I was more concerned about
22 the shooting. The night. So I don't -- I don't recall
23 if I asked him or tried to talk to him about it.

24 Q Well, let's just -- you know, as a detective,
25 if somebody, you know, one of the things that you look

1 for when you're investigating a crime is motive, right?

2 A Yes.

3 Q And if there is bad blood between two people,
4 right?

5 A Yes.

6 Q You look for if -- if somebody ends up dead,
7 you want to know if somebody threatened that person
8 within the recent past, right?

9 A Yes.

10 Q You want to know if somebody threatened to kill
11 that person, right?

12 A Yes.

13 Q And you want to know if somebody threatened to
14 kill that person in the same way they ended up dead, IE
15 shooting, right?

16 A Yes.

17 Q Okay. And so then you talked to Rudy Flores,
18 right?

19 A Yes.

20 Q And what did Rudy Flores tell you about whether
21 he threatened to shoot the victim two weeks before the
22 murders?

23 A I don't recall the statements at this time.

24 Q All right. Would it help to take a look at
25 them? His statement?

1 A Yes.

2 Q Would that refresh your recollection as to what
3 Rudy said about whether he threatened the victim two
4 weeks before?

5 MR. MARTINEZ: Objection. Calls for
6 speculation.

7 A I don't believe so, sir.

8 Q Why don't you believe so?

9 A I need to see the statement to see what he
10 said.

11 Q Oh, I see. Okay. Let me pull that up and
12 we'll mark it as Exhibit 10 [sic].

13 (Exhibit No. 11 was marked for identification.)

14 Q All right. Exhibit No. 10 [sic]. This is a
15 statement given voluntarily to Detective Alfonso
16 Marquez, right?

17 A Yes.

18 Q It's by Rodolfo Flores, right?

19 A Yes.

20 Q Okay. He says that he's Rudy Flores and he
21 lives at 10269 Shenandoah, right?

22 A Yes.

23 Q And you know from reviewing your transcript
24 that he lived just a couple blocks away from the murder,
25 right?

1 A Yes.

2 Q I'm sorry. This document is Bates numbered
3 Defense City 15673 through 15674.

4 All right. We -- it says, "We left the house
5 around 11:00 p.m. and dropped off Ben on Jamaica Street.
6 Going to Jamaica we drove up Fairbanks and made a u-turn
7 and went onto Jamaica. We noticed that there was a
8 party on Jamaica, and there were some people out in the
9 middle of the street." Do you see that, sir?

10 A Yes.

11 Q And you had been working this case since it's
12 inception, right?

13 A Say again please.

14 Q You worked on this case since you arrived at
15 the scene about 1:00 a.m. or called out to the scene
16 about 1:00 a.m. on April 10th, right?

17 A Yes.

18 Q You didn't work any other case between that
19 point and when you charged the case on April 22nd,
20 right?

21 A Right.

22 Q And so you knew that Hernandez had told you
23 that the victims had been a part -- at a party on
24 Jamaica, right?

25 A Yes.

1 Q Okay. So he says, we are in Jose Juarez's car,
2 right?

3 A Yes.

4 Q He says that they drove up to Trans Mountain
5 and got on the freeway towards Cohen Stadium -- Stadium,
6 right?

7 A Yes.

8 Q That they then dropped off Betty, right?

9 A Yes.

10 Q They got some gas, right?

11 A Yes.

12 Q And they got back on the freeway and got off on
13 Trans Mountain and went east on Trans Mountain until we
14 turned on Electric Street. Do you see that?

15 A Yes.

16 Q So -- and -- and you knew from talking to
17 Hernandez and reading Medina's statement that the
18 victims had walked along Trans Mountain to Electric,
19 right?

20 A Yes.

21 Q And it was after they turned from Trans
22 Mountain to Electric that the shooting happened, right?

23 A Yes.

24 Q And the shooting happened at what time, sir?

25 A I don't exactly know the time. I just know

1 when I was arrived -- when I arrived.

2 (Exhibit No. 12 was marked for identification.)

3 Q I see. So let me pause to show you what we'll
4 mark as Exhibit No. 11 [sic].

5 All right. Exhibit No. 11 [sic] is a report by
6 Officer Bellows. Do you see that?

7 A Yes.

8 Q Okay. And he says that it's 12:18 a.m. EMS was
9 dispatched, right?

10 A Yes.

11 Q So the murder happened right around 12:18,
12 maybe a couple minutes before, right?

13 A Well, I want to say yes, but I don't really
14 know.

15 Q Well, on all of your reports you indicate the
16 time number as 12:15 a.m. Right?

17 A Say again please.

18 Q In all of your reports, you indicate that the
19 murder occurred on April 10th, 1993 at 12:15 a.m.

20 Right?

21 A I believe that's the time that it -- that he
22 wrote that statement I believe. I -- I don't understand
23 your question.

24 Q No, sir. The time you wrote this -- this
25 report is at 4:11 a.m.

1 A Okay.

2 Q Do you not remember that in your report you
3 indicate at the top the date and time of the original
4 occurrence?

5 A Yes, sir.

6 Q And the date and time that you listed as -- in
7 all of your reports is the date and time of the
8 occurrence is 12:15 a.m. Do you remember that?

9 A No, sir. I -- I -- I can't answer that
10 question right now if -- if that is the time that I got
11 there or -- I'd have to look at my statement to make
12 sure it matches that number. That date.

13 (Exhibit No. 13 was marked for identification.)

14 Q We'll mark this as Exhibit 12 [sic]. This is
15 your supp report, right?

16 A Yeah.

17 Q Occurrence date, April 10, 1993. Day,
18 Saturday. Time, 12:15 a.m., right?

19 A Correct.

20 Q And that's the time that the murder happened,
21 right?

22 A Correct.

23 Q Okay. So let me go then -- I just want to make
24 sure I'm -- back to Mr. Flores' statement to you.
25 Occurrence, the murder happened at like 12:15 a.m. And

1 Rudy says, "We turned on Electric Street from Trans
2 Mountain, and he looked at the clock in the car and it
3 read 12:15 to 12:20 a.m." Do you see that?

4 A Yes.

5 Q So he's putting -- he's telling you, the case
6 sergeant, that he was at the scene of the crime when it
7 happened, right?

8 A Judging by those times, yes.

9 Q Then he says, "From Electric Street, it is only
10 one to two minutes get to my house." Do see that?

11 A Correct. Correct.

12 Q So he gets home by like 12:20, 12:22 at the
13 latest, right?

14 A Correct.

15 Q Now, you went inside and went to sleep?

16 A Correct.

17 Q Okay. So what does Rudy say about whether he
18 threatened the victim -- threatened to shoot the victim
19 two weeks before the murder?

20 A I don't recall, sir, he said that.

21 Q Well, do you think that that would have been a
22 good thing to write down? What Rudy's explanation was
23 for why somebody was saying that he threatened to shoot
24 the victim two -- two weeks before the victim ended up
25 shot and dead?

1 MR. MARTINEZ: I'm sorry, Russell. Can you
2 repeat that? Your voice digitized.

3 Q Of course. Do you think that would be a good
4 thing to document? Rudy's explanation for what -- for
5 why somebody was saying he threatened to shoot the
6 victim two weeks before the victim ended up shot to
7 death?

8 A I don't know if I asked him, sir.

9 Q Can you think of any reasons why you wouldn't
10 ask him?

11 A No, sir. I can't. But I don't know if I asked
12 him about that night.

13 Q Are you a sloppy detective?

14 A I don't believe so.

15 Q You should have asked Rudy Flores for his
16 explanation of why he was said to have threatened the
17 victim with death, right?

18 A I thought we had investigated that portion and
19 I did not ask it, sir. I don't believe I did.

20 Q Why don't you [inaudible]?

21 A Because I don't remember if I did or did not,
22 but I do not believe that I asked him.

23 Q And -- and I understand you don't remember as
24 you sit here today. It's been a long time. But you're
25 saying you believe -- you have a belief that you did not

1 ask him about that, and I'm trying to find out why do
2 you believe you didn't ask him about it if you can't
3 remember one way or the other?

4 A If I -- if I can't remember, I don't -- I'm
5 going to say I don't believe I asked him. I can't
6 remember if I did or not.

7 Q But we agreed that you should have asked him,
8 right?

9 A At that point, I was concerned about where he
10 was at that day.

11 Q And now he's told you where he was on that day.
12 He was at the scene of the crime, right?

13 A Sir, he was around the area. I am not going to
14 sit here and tell you exactly he was there. I don't
15 know at this time the story.

16 Q But -- yes. You don't know if his time is
17 correct, but, certainly, from his own words, he's
18 telling you he was at Electric and Trans Mountain
19 between 12:15 and 12:20 a.m., and the murder happened at
20 Electric and Trans Mountain between 12:15 and 12:20
21 a.m., right?

22 A Correct.

23 Q So once he tells you that, now you want to know
24 if this somebody threatened to murder my victim, right?

25 A Repeat the question please.

1 Q Sure. Once you know that he's putting himself
2 at about the scene of the crime, you want to know if he
3 has threatened to kill the victim two weeks before the
4 murder, right?

5 A Correct.

6 Q Okay. So we can agree that you should have
7 asked him whether he threatened to kill the victim two
8 weeks before, right?

9 A Yes.

10 Q And we can agree that you should have written
11 down what his response was to that question, right?

12 A If I had asked him, yes.

13 (Exhibit No. 14 was marked for identification.)

14 Q Okay. Let me show you what we'll mark as
15 Exhibit 13 [sic]. Well, I've been bad at marking these
16 exhibits. Are we on 14, Ms. Court Reporter?

17 THE REPORTER: Thirteen [sic].

18 Q Thirteen. Okay. All right. This is a report.
19 The statement given to Detective Laredo. Do you see
20 that?

21 A Yes.

22 Q By Rudy's brother, Francisco Javier Flores,
23 right?

24 A Yes.

25 Q All right. And in this statement, Javier tells

1 Laredo and he says, "I would say I got home at about
2 12:30. My mother was the only one at home at the time
3 and she was watching TV. She asked me if I had been
4 drinking that day, and I told her that I had been -- had
5 not because it was Good Friday. I went straight to bed
6 after that. Detective Laredo has asked me where Rudy
7 was, and as far as I know, he was with a girl named
8 Melissa who lives on Sun Valley. My sister Celi and her
9 boyfriend, Jose Juarez. I don't know where they were,
10 but I know for a fact that they weren't home when I got
11 there. I don't know what time they got home either. If
12 they were together, they were in Jose's car, the green
13 Grand Prix. It's an 80's model. The smaller kind." Do
14 you see that, sir?

15 A Yes.

16 Q So Rudy's brother is telling you he knows for a
17 fact that Rudy wasn't home when he got home at 12:30,
18 right?

19 A Yes.

20 Q And Rudy has told you that he checked the clock
21 on his car and saw that he was one to two minutes away
22 from his home at 12:15 to 12:30 -- to 12:20, right?

23 A Yes.

24 Q All right. And then Rudy's brother says, "The
25 only reason that I would say that Rudy hated those dudes

1 was because they were ECH gang members and Rudy is
2 supposedly a hardcore LML member. I know that my
3 brother crashed his car into the ECH gang members one
4 time, but it wasn't the dudes that were killed. ECH one
5 time shot up -- shot at my house because of my little
6 brother Rudy." Do you see that?

7 A Yes.

8 Q So now Rudy's brother is telling the police
9 that Rudy has crashed into the victims gang members
10 before and that the victims gang members have shot at
11 Rudy's house and that's why he believes that there is
12 bad blood between them, right?

13 A I need to refresh my memory on what gang they
14 belonged to. If the victims -- I don't recall what gang
15 they -- gang they belonged to.

16 Q All right. Well, we have Rudy's brother saying
17 that the victims were ECH gang members, correct?

18 A Correct.

19 Q Is it your belief that the victims were not a
20 member of the gang?

21 A I don't recall if they were or not, sir. I
22 really don't.

23 Q They --

24 MR. MARTINEZ: Hey, Russell. I'm sorry. I'm
25 fading. Can we take a break when you get to a stopping

1 point?

2 Q Sure. Let me just go back to the -- the bottom
3 of Rudy's statement.

4 A Yes, sir.

5 Q Rudy then says that he went to Abraham --
6 Abraham Chacon's house, which is on a Ajax Street and
7 that he talked to Rick Martinez, and Rick Martinez then
8 said, "I'm the one who shot at them." All right. Do
9 you see that, sir?

10 A Yes.

11 Q And in the entirety of Rudy's statement, there
12 is nothing documented about whether he had any conflict
13 with the victims or not, right?

14 A In -- in the case, there is. I believe so. Is
15 that what you're talking about?

16 Q No. In this statement by Rudy Flores?

17 A Correct.

18 Q And Rudy is now saying that it was Rick
19 Martinez that committed the crime, right?

20 A Correct.

21 Q And Rick Martinez told him that he committed
22 the murder, right? Right. It says, "Rick then said,
23 I'm the one that shot at them"?

24 A I'm reading, sir.

25 Q I couldn't hear what you said.

1 A I was saying I was reading it.

2 Q Oh, of course. Take your time and tell me if
3 you need me to move it.

4 MR. MARTINEZ: Can you enlarge it, Russell?

5 Q Yes.

6 MR. MARTINEZ: Thank you.

7 Q Have you had a chance to read it?

8 A Yes. Yes, sir.

9 Q And so Rudy has told you that Rick Martinez
10 said he is the one who shot at them, right?

11 A Yes.

12 Q Okay. All right. Why don't we break there and
13 go off the record.

14 THE VIDEOGRAPHER: All right. We are now off
15 the record. The time is 2:49 p.m.

16 (Recess from 2:49 p.m. to 3:02 p.m.).

17 THE VIDEOGRAPHER: We are back on the record.
18 The time is 3:02 p.m.

19 Q Okay. So you have information that Rudy Flores
20 has been threatening the victim. He puts himself at the
21 crime scene. His brother says he's got a beef with the
22 victims -- that the victims are in a gang and the --
23 Rudy has got a beef with their gang. And Rudy's brother
24 says he didn't come home when he says he came home, and
25 so did you then do further investigation?

1 A [No audible response]

2 Q I'm sorry. I didn't hear your answer. Is
3 anyone else hearing him?

4 THE REPORTER: I can't hear him.

5 MR. AINSWORTH: It's like muted. I think
6 the -- the speaker phone is muted. We can't hear you.
7 Let's -- all right. There we go. Can you test? I
8 can't tell if it's working because you're not talking.

9 MR. MARTINEZ: Yeah. Can you hear us?

10 MR. AINSWORTH: All right. Now we can. All
11 right. Can I reask the question?

12 MR. MARTINEZ: Yeah. Give me a second,
13 Russell. Sorry. All right. Can you hear us now?

14 MR. AINSWORTH: Yes.

15 MR. MARTINEZ: All right.

16 Q Now I have to remember what the question was.
17 It was a good one.

18 And so what -- what -- and so now you further
19 investigate Rudy, correct?

20 A Correct.

21 Q Okay. And what did you do to further
22 investigate Rudy?

23 A We brought him in, took a statement, went to
24 his house. We searched, I believe, his vehicle and his
25 residence.

1 Q And what else did you do to investigate?

2 A I don't recall, sir.

3 Q Did he stop being a suspect?

4 A Yes.

5 Q Why did he stop being a suspect?

6 A We were cleared -- he -- he was cleared.

7 Q Why was he cleared?

8 A Through our investigations, I felt that he had
9 nothing to do with the murders.

10 Q What led you to believe he had nothing to do
11 with the murders?

12 A I don't recall, sir.

13 Q All right. So where would we look to find out
14 why Rudy Flores was no longer a victim?

15 A Repeat that again.

16 Q Where would we look to find out why he was no
17 longer a -- a suspect?

18 MR. MARTINEZ: Objection to form. Lack of
19 foundation.

20 A We were receiving information on other people,
21 and we went from one to the other.

22 Q What other people?

23 A Persons that were bragging about it, sir.

24 Q You mean like Mike Johnston?

25 A Yes. And others.

1 Q And others. Because there were a lot of kids
2 who were bragging about committing these murders, right?

3 A Yes.

4 Q And so because other kids were bragging about
5 this murder, that made you think that it wasn't Rudy
6 Flores. Is that what you're saying?

7 A No.

8 Q Was it because you believed that other kids
9 were falsely bragging about committing this murder and
10 that's why you cleared Rudy Flores of the murder?

11 A No.

12 Q Why did you -- well, did you question Jose
13 Flores who was with Rudy at the time that Rudy was
14 driving around?

15 A I don't recall.

16 Q Would that have been a good thing to do?
17 Question Jose Juarez do find out where Rudy was that
18 night?

19 A Yes.

20 Q Where would we look to find out if anybody
21 interviewed Jose Juarez?

22 A Somewhere in the case. The file or the
23 statements on it.

24 Q And you know there is no statement from Jose
25 Juarez, right?

1 A No, sir. I don't know that.

2 Q Well, have you looked?

3 A I have not.

4 Q Do you have any explanation for why no
5 statement from Jose Juarez was produced to the
6 prosecutor?

7 A No.

8 Q And so do you have any explanation for why Rudy
9 Flores was cleared?

10 A We investigated and I and the rest of the team,
11 or at least I felt he was cleared.

12 Q But can you tell us what investigation you did
13 apart from looking in his house and seeing -- and his
14 car?

15 A I can't recall, sir.

16 Q Well, for example, did you go back to Rudy and
17 say, "Your brother just told us that you weren't home
18 when you said you were home. Do you have any
19 explanation for that?"

20 A No.

21 Q Did you go back to Rudy and say, "You know,
22 Rudy, I've heard these certain accounts about you
23 threatening to shoot and kill the victim two weeks
24 before." Can you tell us about that?

25 A No.

1 Q Was there anything preventing you from talking
2 to Rudy again?

3 A No.

4 Q How did you first come in contact with David
5 Rangel?

6 A What's the -- sorry. Was that a question?

7 Q Yeah. How did you first come in contact with
8 David Rangel?

9 A He came into the office.

10 Q And do you know what led him to come to the
11 office?

12 A A phonecall and then I spoke to him, and then
13 he came into the office later.

14 Q All right. Who made the phonecall?

15 A He called.

16 Q And I'm -- who did he call?

17 A The front desk of our private [indiscernible].

18 Q And do you remember this or are you just
19 reading in the transcripts, so you're telling me what
20 happened in the transcripts? Or do you have an
21 independent recollection?

22 A I have independent recollection of that.

23 Q Okay. And who was it who -- from the front
24 desk who told you that David Rangel was looking to talk
25 to somebody about these murders?

1 A Our secretary.

2 Q Who?

3 A I believe her name is Georgina. I can't think
4 of her last name.

5 Q Did you say Georgina?

6 A We had two secretaries. I believe there was
7 Georgina. I'm not sure.

8 Q Do you take notes of your conversation with
9 David Rangel?

10 A Not reference the phonecall. No.

11 Q Do you take notes of your conversation with
12 David Rangel when he was talking to you in person?

13 A No.

14 Q All right. What did -- what did David say to
15 you on the phone, and what did you say to him?

16 A That he knew who had killed the guys on
17 Electric.

18 Q All right. Did he tell you who it was?

19 A I don't recall if he told us then and there,
20 sir, or told me then and there.

21 Q All right. And did you talk to anyone else?

22 A No.

23 Q Did he tell you anything other than he knew who
24 committed the murders?

25 A No.

1 Q What did you say to him in response?

2 A Keith said he wanted -- he was going to come
3 into the office and a phonecall.

4 Q Okay. Did he tell you why he was calling to
5 tell you he was coming to the office?

6 A No.

7 Q All right. Did he -- so did he -- he came to
8 the office on his own?

9 A I believe his mother came. I'm not sure.
10 Brought him. Or he had a ride in.

11 Q Did you talk to his mother?

12 A No. I did not.

13 Q Do you know if any detective talked to his
14 mother?

15 A No. I do not.

16 Q And when you say he came to the office, which
17 office did he come to?

18 A The Crimes Against Persons office at -- on
19 Raynor Street.

20 Q And where did you meet with him inside the
21 Crimes Against Persons office?

22 A In one of the detective's cubicles.

23 Q Which one?

24 A I don't recall whose cubicle it was.

25 Q What was his demeanor like when you were

1 speaking to him?

2 A Calm.

3 Q Did you know he was facing a harassment charge?

4 A No.

5 Q And so he came to see you without being picked
6 up by any police officers; is that correct?

7 A I believe so.

8 Q And you believe so because he said he was going
9 to come to the station, right?

10 A Yes.

11 Q And you didn't ask anyone to go pick him up,
12 right?

13 A I don't recall asking anybody to pick him up.

14 Q And David came to the station and then you met
15 in the cubicle, and what did he say to you, and what did
16 you say to him?

17 A He said that his brother-in-law was bragging or
18 talking saying he -- saying he was the one that shot
19 the -- that they were shooting on the victim.

20 Q And he said his brother-in-law said this?

21 A No. His cousin, brother, or family.

22 Q All right. And you're talking about Danny
23 Villegas -- Villegas, right?

24 A Yes.

25 Q Did he tell you that Danny Villegas was joking

1 about doing the shooting?

2 A No.

3 Q Not at all?

4 A No.

5 Q There is no -- no miscommunication or anything.

6 David never said anything about Danny joking in this
7 conversation, right?

8 A No.

9 Q That's correct?

10 A No. He didn't.

11 Q Okay. What was your demeanor when you're
12 talking to David?

13 A Calm.

14 Q What's that?

15 A Calm.

16 Q Calm. All right. And so you said that his
17 cousin Danny shot -- said he shot the guys. Did he tell
18 you anything else?

19 A He wrote a synopsis.

20 Q Did you -- did you ask him to write a synopsis?

21 A I believe so. Yes.

22 Q Why did you ask him to write a synopsis?

23 A I just told him write down what -- what you
24 have -- what you -- what was told to you.

25 Q Did you do that with Rudy?

1 A No.

2 Q Did you do that with any other witness in this
3 case?

4 A I don't know, sir. I don't -- I don't think
5 so.

6 Q Why did you do it with David and not any other
7 witness in the case?

8 A I don't know.

9 Q Did David do it on his own accord? You know,
10 pick out -- pull out a piece of paper and start writing?

11 A I gave him paper and the writing pen or pencil.
12 Pen or paper.

13 Q So it was your idea?

14 A Yes.

15 Q Okay. In that first handwritten statement, did
16 David write down that Danny had said he used a shotgun
17 in the shooting?

18 A No.

19 Q Did he ever -- did David ever mention a
20 shotgun?

21 A No.

22 Q And you wanted to know whatever David knew
23 about what Danny had said, right?

24 A Yes.

25 Q And so you just asked David what happened and

1 then David told you, right?

2 A Yes.

3 Q You didn't threaten David, correct?

4 A No.

5 Q You didn't raise your voice to David?

6 A No.

7 Q You didn't tell him to change any portions of
8 his story; is that right?

9 A No.

10 Q That's correct?

11 A That's correct. I did not.

12 Q And so if David wrote a synopsis of what he was
13 told, why did you take a typewritten statement from him?

14 A So it would be in, I believe, fuller detail.

15 Q Why didn't you ask David to write down in
16 fuller detail that you wanted to include?

17 A I don't know.

18 Q Was David reluctant to cooperate?

19 A No.

20 Q Was David saying he didn't want to write any
21 more on the paper?

22 A No.

23 Q Did David sign the statement?

24 A Yes.

25 Q And based on your conversation with David, what

1 did you do next in the investigation?

2 A We went to the supervisor [indiscernible] --

3 THE REPORTER: Can you repeat that?

4 Q I'm sorry. What?

5 A We advised the supervisors of the information
6 we received and went to 5700 Wren.

7 Q Did you talk to anyone else before you went to
8 5700 Wren?

9 A The supervisors.

10 Q All right.

11 A The detectives that were working the case.

12 Q Did you have any involvement in talking to
13 Rodney Williams?

14 A I'm not sure. I don't know, sir.

15 Q Did you talk -- did you direct other detectives
16 to pick up Rodney Williams?

17 A I believe so.

18 Q All right. And -- and you asked, was it Graves
19 to get the statement from Rodney Williams?

20 A I don't recall, sir.

21 Q And that was because of the information that
22 David Rangel was telling you. That's why you directed
23 Graves or directed another officer to go pick up
24 Mr. Williams, right? Rodney William?

25 A I don't recall.

1 Q All right. Let me show you testimony from your
2 first trial. Not your first trial. Mr. Villegas' first
3 trial. So this is your testimony on December 8th, and
4 I'll flip to the page so you can see. December 8th,
5 1994. Do you see that, sir?

6 A Yes.

7 Q Okay. Actually I'm going to make it small
8 until I get to the page I want.

9 Okay. So this is page 284. All right. Line
10 7. You're asked, "Now, as a result of the statements
11 taken there, what did you do next?"

12 Answer, "As a result of the statement that I
13 had taken from David Rangel, I telephoned Detective
14 Scott Graves, and I asked him to try and locate a Rodney
15 Williams."

16 Do you see that?

17 A Yes.

18 Q Does that refresh your recollection that it was
19 Detective Graves who you asked to pick up Rodney
20 Williams?

21 A Yes.

22 Q And does that refresh your recollection that it
23 was as a result of the statement that you took from
24 David Rangel that you asked him to pick up Rodney
25 Williams?

1 A Yes.

2 Q Okay. And so then do you recall one way or the
3 other if you had any interaction with Rodney Williams on
4 April 21st, 1993?

5 A I may have.

6 Q Before you went to 5700 Wren, had you talked to
7 Marcos Gonzalez?

8 A I don't remember, sir.

9 Q Did you ever talk to Marcos Gonzalez?

10 A I don't remember talking to him.

11 Q Was there any reason other than David Rangel's
12 statement that you directed Graves to pick up Rodney
13 Williams?

14 A I don't recall, sir.

15 Q Well, was there any other source of information
16 that suggested you should pick up Rodney William other
17 than David Rangel's statement?

18 A I don't recall.

19 Q Do you recall that Rodney Williams was
20 questioned before you went to 5700 Wren?

21 A I don't recall if it was, but I venture to say
22 he was.

23 Q Were you targeting Danny Villegas?

24 A No.

25 MR. MARTINEZ: Objection. Vague.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q Were you rounding up all of Danny Villegas'
2 friends and just questioning them about what they might
3 know about Danny Villegas?

4 A No.

5 Q Were you only digging up people to question if
6 you had a reason to believe that they had some
7 information about the murder?

8 A They were -- no.

9 Q What do you mean no?

10 MR. MARTINEZ: Objection. Vague.

11 A We were following leads on wherever information
12 came in.

13 Q Got it. Okay. So you wouldn't have gone out
14 to just pick up a friend of Danny Villegas without some
15 reason to believe that the friend knew something about
16 the murder, right?

17 A Correct.

18 Q And whatever David Rangel told you about Danny
19 Villegas' involvement in the murder, you wrote down into
20 his statement so he could review it and sign it, right?

21 A Yes.

22 (Exhibit No. 15 was marked for identification.)

23 Q All right. Let's take a look at -- I'm going
24 to show you what -- I need to close some tabs. Sorry.
25 What we'll mark as Exhibit 14 [sic].

1 All right. Showing you Exhibit 14 [sic]. This
2 is the handwritten statement by David Rangel; is that
3 right?

4 A Yes.

5 Q This version is Bates marked DA 34457. All
6 right. It says the other guy threw their -- or the
7 other guys threw their gang signs according to what
8 Danny told Rangel, right?

9 A That's what it says.

10 Q All right. Now, at this point, did you -- did
11 anyone tell you that there was any gang sign throwing in
12 the -- in the sequence of events that led to the
13 murders?

14 A None that I recall.

15 Q All right. Then it says, "My cousin then shot
16 one and saw the other running. He then chased him and
17 shot the other one in front of a house." Do you see
18 that?

19 A Yes.

20 Q Did you accuse David Rangel of committing this
21 murder or these murders?

22 A No.

23 Q That would have been totally wrong if you'd
24 done that, right?

25 A I did not accuse him.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q And it would have been totally wrong if you had
2 accused a witness with no reason to believe that he
3 committed these murders --

4 MR. MARTINEZ: Objection.

5 (Simultaneous speakers)

6 MR. MARTINEZ: Objection. Vague and lack of
7 foundation.

8 A I did not accuse him.

9 Q And it would have been totally wrong if you
10 did, right?

11 MR. MARTINEZ: Objection. Vague. Lack of
12 foundation.

13 A I can't answer that, sir. I don't know.

14 Q You don't -- it might have been right for you
15 to accuse David Rangel, a witness, of murder?

16 MR. MARTINEZ: Objection. Vague.
17 Argumentative.

18 A He --

19 (Simultaneous speakers)

20 Q Is that what you're saying?

21 A No.

22 Q David said, "The only passengers that I knew
23 was Marcos. The other ones were his homeboys from VNE."
24 Do you see that?

25 A Yes.

1 Q All right. So David names Marcos, meaning
2 Marcos Gonzalez, right?

3 A Yes.

4 (Exhibit No. 16 was marked for identification.)

5 Q All right. So lets turn to Exhibit 15 [sic].
6 This is the statement from David that you took and the
7 time was 7:20 p.m. What does that 7:20 p.m. refer to?

8 A What? Say it again please.

9 Q What does the 7:20 p.m. refer to?

10 A The time that I took the statement.

11 Q That's the time when you started?

12 A Yes.

13 Q All right. And is that the time when you
14 started talking to him, or is that the time you started
15 typing this?

16 A The time I started typing.

17 Q Okay. All right. "My cousin, Daniel Villegas
18 said that he had been with Marcos Gonzalez and some
19 other homeboys from VNE in a black car, and they had
20 spotted Mando and some other guys walking. He did not
21 tell me what streets they were on. Only that he and
22 Marcos and the other homeboys were cruising, and then he
23 then said Mando got up an began to run. I asked him" --
24 for some reason this version is cut off, and I have
25 another version that I'll show you, but, "I asked him

1 why he did not stop there, and he told me that he knew
2 that Mando knew him and could not leave him as a
3 witness. He told me that Mando ran to a house and began
4 to knock on the door yelling, 'Help me'. He told me
5 that he chased him to the house and there shot him
6 again. I asked if Marcos was also shot, and he told
7 me -- or I asked if Marcos was also shot, and he told me
8 that he had not. He told me that he was the only one
9 that shot, and that the gun belonged to one of his
10 homeboys. He was not specific about what type of gun
11 used. I even asked what kind of gun the weapon was used
12 in the killing and I don't know." Do you see that?

13 A Yes.

14 Q Did you accurately report what David Rangel was
15 telling you about what Danny Villegas had told him?

16 A That is his statement. Yes.

17 Q All right. So, sir, can you tell us why you
18 directed Graves to go pick up Rodney Williams after
19 talking to David Rangel?

20 A I may have been mistaken. I don't think it was
21 referenced this -- that I had asked Graves to pick up
22 Rangel. I mean William.

23 Q It doesn't reference what?

24 A I don't think this statement reference the fact
25 that I had told Scott Graves to pick up witness. I

1 don't think it was -- referenced this statement.

2 Q Right. It's not in this statement that you
3 say, go -- Graves, go pick up Rodney Williams. It's in
4 your testimony --

5 A Correct.

6 Q -- From the first trial in 1994 where you said
7 you told Graves to pick up Rodney Williams after talking
8 to Rangel. And I'll tell you that Graves testifies that
9 Marquez tells him to go pick up Rodney Williams after
10 Marquez talks to David Rangel.

11 And so my question to you, sir, is, what was it
12 about the statement from David Rangel that told you to
13 direct Graves to pick up Rodney Williams?

14 A I don't recall, sir.

15 Q Because David doesn't mention Rodney Williams,
16 right?

17 A Correct.

18 Q And so I'll -- I'll ask you then, sir, were you
19 targeting Danny Villegas by just rounding up his friends
20 and asking them --

21 A No.

22 Q -- What they knew about the murder?

23 A No.

24 MR. MARTINEZ: You have to let them finish his
25 question, because I need a chance to object. Objection.

1 Cumulative.

2 THE REPORTER: Objection. What?

3 MR. MARTINEZ: Cumulative. It's Latin for
4 asked and answered.

5 Q You can ask again. You can answer again.

6 A The question was?

7 Q So, sir, I'm going to ask you again. Were you
8 rounding up Danny Villegas' friends and trying to get
9 them to say things about Danny Villegas and the murder?

10 MR. MARTINEZ: Objection. Asked and answered.

11 A No.

12 Q And from what source did you get the lead to go
13 pick up Rodney Williams?

14 A From other statements or investigation that we
15 had conducted.

16 Q What other statement?

17 A I don't recall at this time.

18 Q Where is it written?

19 A From other statements and investigation.

20 Q What other statements? Who named Rodney
21 Williams as a witness to this case?

22 MR. MARTINEZ: Objection. Asked and answered.

23 A Rodney Williams was one person that we had to
24 investigate in reference to this case.

25 Q Why?

1 A I don't recall, sir.

2 Q Who named Rodney Williams name for the first
3 time?

4 A I don't know.

5 Q You charged Rodney Williams with murder, right?

6 A Yes.

7 Q Would you agree with me that the -- the way
8 that the police -- well, strike that.

9 Would you agree with me that the way that a
10 murder suspect first comes to the police's attention is
11 an important step in the investigation?

12 MR. MARTINEZ: Objection. Vague.

13 A Typically, yes.

14 Q Is there ever a time when it's not important to
15 write down how a murder suspect first comes to the
16 police's attention?

17 A No.

18 Q A basic step in documenting an investigation is
19 to document how a suspect first comes to the police's
20 attention, right?

21 A Yes.

22 Q You didn't document anywhere how Rodney
23 Williams came to your attention, did you?

24 A I don't remember, sir.

25 Q Let me show you what we marked as Exhibit 12.

1 This is your report.

2 All right. So you mentioned the synopsis and
3 the typed statement from Rangel. You mentioned the
4 statement was a Marcos Gonzalez. "On the same date,
5 April 21st, 1993, statement was taken from a Rodney
6 Williams of 5249 Wren who stated he had been in the
7 vehicle that shot and killed the victims." Do you see
8 that?

9 A Yes.

10 Q And then you say on April 22nd, 1993, "As per
11 the statement of Rodney Williams, Daniel Villegas was
12 picked up and taken to the Juvenile Probation
13 Department." Do you see that?

14 A Yes.

15 Q Shoot. Was I -- I wasn't sharing any of that,
16 was I? My apologies to you, sir.

17 All right. Well, this is your report and in
18 your report you don't indicate how Rodney Williams came
19 to be -- came to the police's attention, right?

20 A Correct.

21 Q Is there anybody we could ask to find out how
22 Rodney Williams came to the police's attention?

23 A I believe he was one of the guys who was
24 investigated for bragging or stuff like that, or he was
25 mentioned and we had to pick him up.

1 Q I'm sorry. He was mentioned by whom?

2 A I don't recall, sir.

3 Q Was he mentioned by a witness?

4 A I don't recall.

5 Q When did the witness mention him?

6 A I don't recall.

7 Q What did they say about him?

8 A I don't recall.

9 Q If somebody had said that Rodney Williams was
10 connected to this murder, that should have been
11 documented, right?

12 A Yes.

13 Q Lazo was shot in the front, right?

14 A I don't recall the autopsy report, sir. I
15 don't remember exactly.

16 Q All right. Let me show you that same testimony
17 from September 8th, 2011. I'll actually share my screen
18 this time. All right. Okay. This page 141 of that
19 transcript. Oh, ten pages before. Sorry.

20 Okay. I'm going read you your testimony from
21 that -- no. Actually start on page 130, line 25.

22 "After reviewing this, referring to the autopsy
23 checklist, would you agree that we have an entry wound
24 of a gunshot wound in the abdomen of this individual?"

25 Answer, "Yes, sir."

1 Question, "And it appears that there is a
2 second wound that's stated in the autopsy report, and
3 it's corroborated in the autopsy checklist that it's a
4 bullet wound entry wound in the thigh; is that correct?"

5 Answer, "Correct."

6 "Then we have gunshot wound number two.
7 Entrance wound. Do you see that?"

8 "Yes."

9 Question, "As it -- and is it fair to say that
10 there are only two entry wounds in the body that appears
11 on this checklist of the autopsy that was done on
12 Armando Lazo. Would you" -- and then you say, "The
13 original -- I can't read it. From here I see entry
14 wound. A bullet wound and one exit to the same leg,
15 entry and exit.

16 Question, "Right. We were just talking about
17 the entry wound in the questions that I was asking you."

18 Answer, "I see only one entry according to
19 this. Two entries in the front and then one exit to the
20 back of these two photographs."

21 Question, "Right. You see two entries to the
22 front and one exit on the back?"

23 Answer, "Yes, sir."

24 Now, were you asked those question, and did you
25 give those answers, sir?

1 A Yes.

2 Q And then on page 133, line 3.

3 "Okay. That's all I was trying to establish.

4 And the two bullet shots to Armando Lazo, the entry
5 wounds were to the front, correct?"

6 Answer, "That is correct."

7 Were you asked that question? Did you give
8 that answer, sir?

9 A Say it again.

10 Q Were you asked that question? Did you give
11 that answer?

12 A Yes.

13 Q And so you agree that Armando Lazo was shot two
14 times in the front, right?

15 MR. MARTINEZ: Objection. Vague.

16 Q In the front of his body, right?

17 MR. MARTINEZ: Objection. Vague.

18 A From the picture that I saw, yes.

19 Q And from your testimony, right?

20 A Yes.

21 MR. BRITTAIN: Russell, can I see the front
22 page of that which volume this is.

23 MR. AINSWORTH: Sure. This is the
24 September 8th, 2011 testimony, Volume XII.

25 MR. BRITTAIN: Thank you.

1 Q Of course. And as we talked about before,
2 Hernandez said that the shooters chased him and Medina
3 as they ran away from the scene, right?

4 A Yes.

5 Q And as you talked about in that same Writ
6 hearing testimony at some length, the evidence is that
7 Lazo ran straight towards where the shooter -- where the
8 shell casings were found in the street to get to the
9 house of the [indiscernible]. Do you remember that?

10 A Repeat that again, sir.

11 Q Sure. There were six shell casings -- bullet
12 casing found at the scene, right?

13 A Yes.

14 Q And those are the only casings found at the
15 scene, right?

16 A To my knowledge, yes.

17 Q There are no casings found near the house where
18 Lazo came to rest, right?

19 A No.

20 Q And if the car with the shooter in it was
21 chasing Hernandez and Medina, then the shooter couldn't
22 have been chasing Lazo as David Rangel -- Rangel's
23 statement says, right? Did you hear the question?

24 A Yes. I did. But I'm trying to -- all I know
25 is that he ran -- that he ran to the house.

1 Q Right. Well, let me show you that same
2 transcript from September 8th, 2011. This is page 208,
3 line 18. "It was what Jesse Hernandez, who you
4 interrogated, who was a survivor and an eyewitness, what
5 he said, and what has been clearly established, is that
6 when the shootings start, him and Juan ran and the car
7 chased them?"

8 And you answer, "Correct."

9 "So if that car chased them as soon as the
10 shooting started, Daniel could not have tried to chase
11 Mando like he stated in his statement. That doesn't
12 make sense, does it, Detective Marquez?"

13 "No. It doesn't."

14 Were you asked those questions, and did you
15 give those answers?

16 A Yes.

17 Q All right. And -- and were you truthful at the
18 time?

19 A Yes.

20 Q So it doesn't make sense that if Daniel -- if
21 the car is chasing down Medina and Hernandez, that the
22 car would also be going towards the house to chase down
23 Lazo and shoot him then, right?

24 A Sir, I don't know.

25 Q Well, you testified before that it doesn't make

1 sense, right?

2 A Correct.

3 Q And you stand by that answer?

4 MR. MARTINEZ: Objection. Vague.

5 A I picture the house and the car, that it was
6 same direction.

7 Q The house and the car are in the same
8 direction?

9 A Yes, sir.

10 Q Okay. Hernandez and Medina run towards
11 Fairbanks, right?

12 A I don't recall if it was Fairbanks.

13 (Exhibit No. 17 was marked for identification.)

14 Q I don't think we've marked this as an Exhibit.
15 This will be Exhibit 16 [sic]. This is the statement
16 that you took from Jesse Hernandez, right?

17 A Yes.

18 Q "I ran to Major Video on Fairbanks." Do you
19 see that?

20 A Show it to me again.

21 Q Oh, is it too small? "I ran to Major Video on
22 Fairbanks." Do you see that?

23 A Yes.

24 Q All right. So Juan and Jesse Hernandez ran
25 towards Fairbanks, right?

1 A Correct.

2 Q And the car chased them towards Fairbanks,
3 right?

4 A Correct.

5 Q And so if the car chases them towards
6 Fairbanks, it's not driving towards the house, right?

7 A It was what, sir?

8 Q It's not driving towards the house where Lazo
9 came to rest, right?

10 A I believe it is.

11 Q What do you believe -- what do you base that
12 belief on, sir?

13 A From the crime scene, I was told where the
14 house was. As I looked, I looked -- I saw the house
15 down the street on the other side and -- to the vehicle
16 parked. Shot shells on one side and the houses further
17 down going that way.

18 Q The house was checked for bullet damage, right?

19 A Correct.

20 Q There was no bullet damage to the house, right?

21 A Correct.

22 Q There were no casings in front of the house,
23 right?

24 A Correct.

25 Q There was no reports of additional shots being

1 fired after the initial shots, right?

2 A Correct.

3 Q Jesse Hernandez talked to you the night of the
4 murder. He didn't mention there being subsequent shots
5 after the first round of shots, right?

6 A Correct.

7 Q The only casings found were found in one
8 location, right?

9 A Yes.

10 Q Is there any evidence whatsoever to suggest
11 that there was a second round of shooting at a slain
12 Lazo in front of the house?

13 A No.

14 Q And Lazo was shot in the front, right?

15 A Yes. As per the report. The autopsy report.

16 Q So he wasn't chased down from behind and shot
17 from the back, right?

18 A No. Not that I know of.

19 Q And what color was the car that the
20 perpetrators were driving in?

21 A There was so many colors that I couldn't say
22 which one.

23 Q Come on. We just looked at Mr. Hernandez's
24 statement. You only have two eyewitnesses, right?

25 A Yes.

1 Q And Hernandez says, it was a maroon and red
2 car, right?

3 A Correct.

4 Q With white wall tires, right?

5 A Correct.

6 Q And then Medina says it was a gold-ish car,
7 right?

8 A Correct.

9 Q But Rangel said it was a black car.

10 A Correct.

11 Q That was wrong, right? It was not a black car
12 used in the murder, right?

13 A I don't know, sir.

14 Q You think it might have been a black car used
15 in the murder?

16 A I don't know.

17 Q It -- it certainly didn't fit with the facts
18 that you had, right?

19 A There was different colors of cars.

20 Q It didn't fit with the facts. Nobody said it
21 was a black car, right?

22 A I don't recall.

23 Q Well, who -- who saw the car other than
24 Hernandez and Medina?

25 A I don't think anybody else.

1 Q Just those two. One says it was maroon red,
2 and the other says it was gold-ish, right?

3 A Correct.

4 Q So nobody said it was a black car, right?

5 A I don't recall.

6 Q Who else could -- could it be? Do you think
7 there was a -- the -- the unreported -- did you talk to
8 another eyewitness to the shooting?

9 A No, sir.

10 Q So then why do you say you don't recall when
11 you know that the only description of the car was from
12 Hernandez saying it was maroon red and Medina saying it
13 was gold-ish?

14 A The other statement that we had taken, people
15 mentioned different colors of people that were
16 supposedly bragging about the -- the murders.

17 Q But none of them were witnesses to the murder,
18 right?

19 A Say again.

20 Q None of them witnessed the murder, correct?

21 A Correct.

22 Q The only facts you had came from Hernandez and
23 Medina, right?

24 A Correct.

25 Q So the only facts that you had as the detective

1 investigating this case was that the car was either
2 maroon red or gold-ish, right?

3 A Correct.

4 Q And nobody said it was black, right?

5 A I don't recall.

6 Q Neither Hernandez nor Medina said the car was
7 black, right?

8 A Correct. Correct.

9 Q Neither Hernandez nor Medina said the car was
10 white, right?

11 A I don't recall, sir.

12 Q I thought we just went through this. They said
13 it was either maroon red or gold-ish, right?

14 A Correct.

15 Q And so neither of them said it was white,
16 right?

17 A I don't recall what either -- one said one
18 thing. The other one said the other one, and I don't
19 recall who said what.

20 Q Well, we just looked at Hernandez's statement.
21 It said maroon red. Okay?

22 A Correct.

23 Q You remember that from just two minutes ago,
24 right?

25 A Yes. Yes.

1 Q Okay. We're not having one of those episodes,
2 right?

3 A Yes.

4 Q Okay.

5 MR. MARTINEZ: And I need to -- I need to
6 object. That's argumentative. Don't answer that
7 question.

8 Q Do you want to look at the -- at Medina's
9 statement that we saw before this was -- sorry.

10 Ms. Court Reporter, I don't remember if it was
11 three or four. It was one or the other.

12 A I didn't understand the question to your
13 report.

14 Q I don't know if this is Exhibit 3 or Exhibit 4
15 to your deposition, but whichever one it is, I'm going
16 to show it to you. "The car was a 70's model, and it
17 looked like a Monte Carlo. Gold-ish." Do you see that.

18 A Yes.

19 Q All right. So now that we've refreshed your
20 memory. We've got Medina saying it was gold-ish.
21 Hernandez saying it was red maroon. Neither one said it
22 was white, correct?

23 A Correct.

24 Q And neither one said it was beige, correct?

25 A Correct.

1 Q Do you remember what Rodney Williams said about
2 the murder?

3 A I didn't hear your question, sir.

4 Q Do you remember what Rodney Williams said about
5 the murder?

6 A No, sir. I don't recall right off.

7 (Exhibit No. 18 was marked for identification.)

8 Q All right. Let's take a look at what we'll
9 mark as Exhibit 17.

10 All right. This is a statement from Rodney
11 Williams. This version is Bates numbered Villegas
12 JS015779 through 80.

13 All right. He says he went to Boomerangs
14 Theater. And remember that because it's going to be
15 important later. Rodney went -- saying he's going to
16 Boomerangs Theater. Okay? You with me?

17 A Yes.

18 Q It says, "I met up with Danny Villegas and
19 Marcos Gonzalez at the theater, and I was also with
20 Eddie Gonzalez, who goes to Magoffir. I left with
21 Marcos and Danny at about 9:30 p.m. and Eddie stayed at
22 Boomerangs." Do you see that?

23 A Yes.

24 Q "Then they went to the Village Green
25 Apartments, and then a white car came up with two guys

1 in the car. The guys in the car are nicknamed Popeye
2 and Snoopy and Popeye was driving." Got it?

3 A Yes.

4 Q In preparation for this deposition, did you
5 look to see which one of those was incarcerated on
6 April 10th, and which one was on electronic monitoring?

7 A I don't recall, sir, which one.

8 Q All right. Well, Popeye was incarcerated. And
9 Droopy was on electronic monitoring. But we'll get to
10 that.

11 "So then they wanted to do a beer run, and so
12 they went to the Diamond Shamrock, and Danny and Marcos
13 made a beer run about a case." Do you see that?

14 A Yes.

15 Q "And then they stopped and talked to a few
16 girls", right?

17 A Yes.

18 Q And then Popeye -- it was Popeye's idea to
19 let's go do something, right?

20 A Yes.

21 Q "And then Popeye slowed the car and said
22 something to them in Spanish, and I then he said, Que
23 Barrio"?

24 A Yes.

25 Q And according to Rodney Williams, "Popeye then

1 grabbed under the seat and got a gun that was wrapped in
2 a white cloth, and he handed the gun to Danny. Danny
3 took the gun and started to fire the gun, and one of the
4 guys that was walking fell to the ground right away.
5 Two of the guys started to run right away and then Danny
6 shot the other gun" -- the other -- it says gun but I
7 think it's supposed to be guy; is that right?

8 A Could be. Yeah.

9 Q "I think that he hit the other guy in the back.
10 I think that there were four shots fired, but I'm not
11 sure because after the first few shots, I covered my
12 ears and bent down in the seat. I thought we were
13 getting shot at too. I did not know that Danny was
14 going to shoot the gun, and I couldn't do anything about
15 it. I have seen the two guys that got shot at
16 Boomerangs before, but I didn't know their names. After
17 Danny shot the guys, then he wrapped the gun in the
18 cloth it was in and gave it back to Popeye." Do you see
19 that?

20 A Yes.

21 Q Popeye put the gun back under the front seat,
22 right?

23 A Yes.

24 Q "Popeye was driving the car, and Snoopy was
25 sitting beside him in the front passenger seat. Marcos,

1 me, and Danny were in the back seat and Marcos was
2 sitting behind the driver, Popeye. I was seated in
3 the -- in the middle and Danny was behind the front seat
4 passengers -- front seat passenger by the door. The car
5 was a white four-door car, and it was medium sized." Do
6 you see that?

7 A Yes.

8 Q And so you, as the police officer, wanted to
9 know what happened to the murder weapon, right?

10 A Yes.

11 Q And so you tried to find out who Popeye and
12 Snoopy were, right?

13 A Yes.

14 Q Did you talk to the gang division to find out
15 who Popeye was?

16 A I did not talk to them personally. No.

17 Q How did you find out who Popeye was?

18 A Through investigation.

19 Q What investigation?

20 A I don't recall who did the investigation into
21 those gentlemen.

22 Q So after Rodney gives his statement, you want
23 to go arrest Danny Villegas, right?

24 MR. MARTINEZ: Objection. Vague.

25 A I don't -- I don't recall.

1 Q What was -- what was the next thing you did
2 after you talked to David Rangel and took his statement?

3 A We conferred with the supervisors as to what
4 Danny -- I mean David had said.

5 Q Which supervisors?

6 A I believe it was Sergeant Johnson.

7 Q And who else was in this -- in this meeting?

8 A Who else was a person? Was what?

9 Q Who else was part of this conferring with the
10 supervisor?

11 A I guess myself, Sergeant Johnson, and whoever
12 detective [indiscernible] was there.

13 Q What did you say to Sergeant Johnson -- Johnson
14 and what did Sergeant Johnson say?

15 A I told Sergeant Johnson that I had a statement
16 naming Danny, and we needed to go pick him up. And he
17 said just go ahead and -- go ahead and do it. He just
18 said, all right.

19 Q He just said all right?

20 A He said, okay, or, you know, whatever you need
21 to do.

22 Q All right. And so why were you telling him?

23 A Because he's my supervisor. We have to refer
24 to him.

25 Q All right. So then you brought you -- and so

1 then tell us what you did?

2 A I don't recall exactly what I did. I just got
3 ready to go out to Villegas' house.

4 Q Marcos Gonzalez was also at Danny's house; is
5 that right?

6 A Yes.

7 Q So tell us what happened when you got to
8 Danny's house?

9 A When we got to Danny's house, I knocked on the
10 door. We parked, knock on the door. Mom opened the
11 doors. We told her what we were there for. We need to
12 speak to Danny. She let us in. They called Danny. He
13 came out. I told the mom what we had.

14 Q All right. Had you -- had you talked to Marcos
15 Gonzalez before seeing him at Danny's house?

16 A I don't recall, sir. I don't recall.

17 THE REPORTER: Can you repeat that question?

18 Q Had you talked to Marcos Gonzalez before you
19 got to Danny's house?

20 If you had talked to Marcos Gonzalez before you
21 got to Danny's house, should you have written that in a
22 report?

23 A If we had talked to him.

24 Q If you had talked to him. Yes. You should
25 have written it down, right?

1 A Yes.

2 Q All right. Let me show you testimony from your
3 first -- from Mr. Villegas' first trial on December 8th,
4 1994. So I'm just going to warn you.

5 MR. JEEP DARNELL: Russell, before we start on
6 the next thing, is there any way we can take a short
7 bathroom break?

8 MR. AINSWORTH: We can.

9 MR. JEEP DARNELL: Please.

10 MR. AINSWORTH: Sure. Let's go off the record.

11 THE VIDEOGRAPHER: All right. We are off the
12 record. It is 4:13 p.m.

13 (Recess from 4:13 p.m. to 4:25 p.m.)

14 THE VIDEOGRAPHER: We are back on the record.
15 The time is 4:25 p.m.

16 Q Okay. I'm showing you what we -- well, I'm
17 showing you your testimony from that first trial on
18 December 8th, 1994. And you're asked this question on
19 page 287, line 19.

20 Question, "And how are you sure it was
21 approximately 11:00 o'clock or so that you arrived at
22 the defendant's home?"

23 "When I was in the -- when we asked for the
24 defendant through his mother, I read him his rights at
25 the house and that's the time that I jotted on the

1 Miranda Warning Card." Do you see that, sir?

2 A Yes.

3 Q Were you asked that question and did you give
4 that answer?

5 A Yes.

6 Q Do you give that answer under oath?

7 A Yes.

8 Q And were you truthful?

9 A Yes.

10 Q All right. So when you got to the house, you
11 read Danny his rights; is that right?

12 A Yes.

13 Q Where did you do that?

14 A I'm sorry.

15 Q Where did you do that at the --

16 A In the living room.

17 Q In the living room. Who was present for that?

18 A His mother and I believe his sister and his
19 father showed up while -- I mean, minutes. He came from
20 the back bedroom and Danny.

21 Q Was Danny's father there when you read him his
22 rights?

23 A Yes.

24 Q All right. Was there anyone else there?

25 A Aside from -- from -- was it Marcos? I believe

1 Marcos.

2 Q Well, was Marcos there?

3 A Marcos came from inside the -- also the
4 bedroom.

5 Q All right. So do you read Marcos his rights?

6 A No. I did not.

7 Q Why didn't you read Marcos his rights?

8 A Because I was only there for -- to speak to
9 Danny. I didn't know Marcos was there.

10 Q But Marcos was there, right?

11 A Yes.

12 Q You brought Marcos and Danny from the house
13 together, right?

14 A Correct. Correct.

15 Q And so why didn't you read Marcos his rights
16 when you saw him at the house?

17 A I did not handle Marcos. I was talking to
18 Danny.

19 Q Well, did somebody else read Marcos his rights
20 at the house?

21 A I don't know.

22 Q So in your mind -- well, how did you know that
23 you weren't going to deal with Marcos?

24 A That we -- ask again.

25 Q Before you got to Danny's house, did you have a

1 plan that you were going to handle Danny and that
2 somebody else was going to handle Marcos?

3 A No.

4 Q Okay. So why was the fact that -- why did you
5 think that you were just handling Danny, and so you
6 weren't going to read Marcos his rights?

7 A Needed to speak to Marcos also. I did not know
8 he was there.

9 Q But once you became aware that he was there,
10 why didn't you? You knew you were going to interrogate
11 him, right?

12 A We're going to talk to him.

13 Q Okay. Well, he was just named as a suspect in
14 a murder, right?

15 A Correct.

16 Q He wasn't free to leave, right?

17 A We needed to talk to him. I mean, we had no --
18 let's say warrants for him.

19 Q Did you seek a warrant for him?

20 A For?

21 Q For Marcos?

22 A I don't recall, sir.

23 Q All right. So -- so you don't remember seeking
24 a -- signing an affidavit seeking a warrant for Marcos
25 about 8:30 that evening?

1 A I don't recall. No.

2 Q All right. So, in any event, you intentionally
3 only warned Danny Villegas of his rights and not Marcos
4 when you were at the house?

5 A I only warned Daniel Villegas.

6 Q Did you tell Marcos not to listen when you were
7 reading the rights to -- to Danny?

8 A No.

9 Q Why didn't you just read them their rights
10 together?

11 MR. MARTINEZ: Objection. Asked and answered.

12 A I only read them to Marcos. I mean to Danny.

13 Q I know. I'm asking you why didn't you read
14 them their rights together?

15 MR. MARTINEZ: Objection. Asked and answered.

16 A I don't know.

17 Q Because the -- the first five rights are the
18 same for adults and juveniles, right?

19 A Don't recall exactly those.

20 Q All right. In any event, you -- you only read
21 Danny his rights and not Marcos and then what did you
22 do?

23 A We told the mom and the father that we're going
24 to take them down to the station. They didn't disagree
25 and we placed Danny in my vehicle. My detective car.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q Who made the decision to put Danny in your
2 vehicle? Why did you do that?

3 A We had two and I decided I'm going to take
4 Danny.

5 Q How did you find out that Popeye was
6 incarcerated at time of the murder?

7 A Through further investigation.

8 Q What further investigation?

9 A We were trying to locate them, and we found --
10 we found through the investigation that one of them
11 was -- home or APD, and the other one was on the leg
12 monitor.

13 Q Okay. And so did you look up in the database
14 and find out where they were on that day?

15 A Sir?

16 Q Did you look up in the database to find out
17 where they were on that day, or how did you -- how did
18 you go about finding out where they were?

19 A I -- I don't recall, sir.

20 Q All right. So you put Danny in your car and
21 you're required by policy and the law to bring him
22 directly to the intake officer, right?

23 MR. MARTINEZ: Excuse me. Excuse me. Madam
24 Court Reporter, can you read that back please.

25 THE REPORTER: Yes.

1 MR. MARTINEZ: Ashley, you're muted. I can't
2 hear you.

3 THE REPORTER: Oh.

4 (Requested portion was read)

5 MR. MARTINEZ: Objection. Form. Objection.
6 Calls for speculation. Mischaracterizes the evidence.

7 **Q You can answer.**

8 A JIS was given our investigation section.

9 THE REPORTER: Repeat that.

10 A The JIS was given our investigation. YS well,
11 now it's known as YSD or was YSD.

12 **Q All right. And so, in any event, it would be**
13 **totally improper to make a stop along the way at a mall**
14 **to confer with other detectives; is that right?**

15 MR. MARTINEZ: Objection. Vague.

16 A I -- I still remember stopping. I don't know
17 if it was warning that go off to thank the officers that
18 had assisted us, the patrol officers, and to get
19 together with Detective Graves and Detective Laredo that
20 we were going to go to JIS, and they were going to go to
21 center patrols with Marcos.

22 **Q Where did you have that conversation?**

23 A Like I said, I don't recall where we had pulled
24 over, but I remember there was the back of a building.
25 I don't remember what inside at all.

1 Q Why did you have to pull over to have this
2 conversation?

3 A I felt it necessary to thank the officers for
4 assisting us in going to Danny's house and then to make
5 sure that we knew what each one of us was going to do.
6 Me, go to the -- the JIS. And Scott Graves was going to
7 go downtown.

8 Q You think that Scott Graves didn't know where
9 to take a suspect in a murder case?

10 A No, sir. I don't.

11 Q Do you -- do you think that other people didn't
12 know that Danny would have to go to JIS as a juvenile?

13 A We knew. No, sir. I don't.

14 Q What did the patrol officers do -- well --
15 well, strike that.

16 So did you forget to thank the officers when
17 you were at the scene?

18 A We thanked them after, sir.

19 Q Right. Did you forget to thank them when you
20 were at the scene?

21 A Can you be more specific? What scene?

22 Q Sorry. At 5700 Wren, when you were all there,
23 did you forget to -- to thank the police officers then?

24 A I did not forget. We didn't think them then.

25 Q Okay. And so then you realized that you wanted

1 to -- you didn't think about thanking them until you're
2 already driving away, correct?

3 A When we went out of the house, then we said
4 it's -- let's go meet and I remember meeting and
5 thanking -- the officers followed us. We thanked them.
6 They went on their way, and we went on our way.

7 Q Who -- who did you -- why didn't you -- you
8 said you were going to drive and then stop? That was
9 the plan?

10 A No, sir. I wanted to thank them. We'd go away
11 from the house. Okay. And then we stopped. I thanked
12 the officers. Further to -- [indiscernible] go over
13 there. I'm going to go over there and that was it, and
14 then we went to where our directions were.

15 Q Okay. Who is -- who is first in this -- who
16 was the first car to leave?

17 A We all left together.

18 Q Who was first? Which car was the front?

19 A I don't recall whose car went what direction.

20 Q How did you signal to the others to pull over?

21 A I don't recall. I presumed we just follow each
22 other to wherever we're going to meet.

23 Q How did you know where you're to going meet?

24 A We didn't. Wherever we stop is where we met.
25 I don't -- and that's what I'm saying. We stopped.

1 This -- let's get away from the house. We'll meet. And
2 thank you very much and all this stuff. Thanks guys and
3 so forth and we...

4 Q Did you tell people let's get away from the
5 house and meet?

6 A I don't recall but I'm assuming I may have.

7 Q You're assuming that you may have told people
8 to get -- well, let's get away from the house and then
9 we'll meet?

10 A Yes. Because I didn't want to be out parked in
11 front his house any longer.

12 Q Why didn't you want to be parked out in front
13 of his house?

14 A To avoid any problems thereafter.

15 Q What problems were you having?

16 A Weren't having no problems, but I wanted to
17 make sure that none would come up.

18 Q All right. You had four detectives at the
19 scene, right?

20 A Correct.

21 Q Two patrol officers, right?

22 A Correct.

23 Q You had a marked squad and two unmarked police
24 cars there, right?

25 A Correct.

1 Q Nobody was hassling you?

2 A Correct.

3 Q Was there anything stopping you from putting
4 Marcos and Danny in the car and then saying thank you to
5 the police officers, to the uniformed officers, and
6 telling Scott, you went to high point -- five points and
7 I'll go to JIS.

8 A They were not in that close of a proximity to
9 us.

10 Q Where were they?

11 A They were further on the corner I believe. And
12 I don't know what corner, but I know that they parked on
13 the corner. I parked in front of the house, and
14 I believe the Detectives Salice and Laredo parked across
15 the street from his house.

16 Q All right. So there were -- there were too far
17 away for you guys to have a quick meeting for --

18 A Correct.

19 Q They were too far away from you guys to have a
20 quick meeting, right?

21 A Correct.

22 Q So you -- you did stop along away, right?

23 A Yes.

24 Q When is the first time that you have ever told
25 anyone apart from your attorneys that you stopped along

1 the way?

2 A I believe just today I think.

3 Q All right. So how long did you stop for?

4 A Two minutes.

5 Q And what street were you on?

6 A I don't know, sir.

7 Q How far from Danny's house were you?

8 A I don't know.

9 Q You stopped at the back of a building?

10 A What I recall.

11 Q Were you driving?

12 A Yes.

13 Q Did you choose that spot at the back of the
14 building?

15 A I don't believe so, sir. I didn't know the
16 area.

17 Q Did all of the officers get out of their cars?

18 A I don't recall.

19 Q Did you leave Danny and Marcos in the back of
20 the cars?

21 A In the back of separate cars. Yes.

22 Q All right. And so then you -- you drove down
23 to JIS, and what did you do when you got to JIS?

24 A I walked in. I took him to the front desk.

25 They signed him in, had him sit -- sit down at a -- I

1 believe it was a sergeant's office of that particular
2 department.

3 Q And you didn't question him, right?

4 A No, sir. I did not.

5 Q Did you tell him what this was about?

6 A Yes.

7 Q What did you tell him?

8 A That we were investigating the murders
9 [indiscernible] and that he had been named.

10 Q And did Danny say anything in response?

11 A At that point, I don't believe so. No.

12 Q Okay. So then what did you do at JIS?

13 A I had asked him if he wanted to give us a
14 statement. He said yes. So we began to do the
15 paperwork that we needed.

16 Q Okay. And who did the paperwork?

17 A The juvenile paperwork I believe was done by
18 Detective Charlie Ortega.

19 Q Okay. How long were you at JIS?

20 A I would say, I don't know. I would say -- I
21 don't know.

22 Q Well, was it -- was it more than a half an hour
23 or less than half an hour?

24 A I believe it was more than half an hour but I
25 don't recall.

1 Q Were you doing anything other than waiting for
2 Charlie Ortega to do the paperwork while you were at
3 JIS?

4 A We were waiting for additional paperwork to
5 come in so that we could go ahead and present it to the
6 intake officer.

7 Q What was the additional paperwork that you were
8 waiting for?

9 A Statements. We had to pull them up from RMS,
10 whatever we needed, to present it to the intake officer.

11 Q Why did you have the statements with you?

12 A Because they were in RMS. They were in our
13 computer system.

14 Q So -- so you just had to print them out from
15 the computer? Is that what you're saying?

16 A Yes, sir. Go in and print them off from the
17 computer.

18 Q And so you weren't waiting on anything. You
19 just needed to print the reports off the -- from the
20 computer, right?

21 A Yes.

22 Q So what do you mean when you said you were
23 waiting for other reports?

24 A In other words, that we needed to print -- to
25 get printed out of the computer.

1 Q Okay. Where -- was anyone with Danny while you
2 were waiting for the information to be gathered
3 together?

4 A Myself, Detective Alvarez, and Detective
5 Ortega.

6 Q So all three of you were sitting with Danny?

7 A We weren't sitting with him, sir. He was
8 sitting in the office of the sergeant, and we were
9 around the vicinity.

10 Q All right. Was anyone in that office with him
11 is what I'm asking.

12 A Oh, no, sir. It's an open office.

13 Q All right. And so no -- you could see that
14 nobody was questioning him while he was there?

15 A Correct.

16 Q All right. So he had not confessed to murder,
17 right?

18 A Correct.

19 Q And you brought him over to the juvenile
20 probation department, right?

21 A To the JIS first.

22 Q JIS. But then where did you go from there?

23 A And then after he give us a statement, we had
24 to take him to the juvenile probation department to the
25 intake office.

1 Q All right. And once you're there, what
2 happened?

3 A He speaks to the intake officer.

4 Q Okay. And were you present for that
5 conversation?

6 A We were present but not -- you couldn't hear
7 any of the conversations that he was having with them.

8 Q Okay. And then where did you go after the
9 intake?

10 A After the intake officer gave him back to us
11 and said that he was willing to give us a statement, and
12 he took us to Judge Horkowitz.

13 Q Okay. How far was that drive?

14 A Excuse me. We went back -- we went back to JIS
15 to make out the paperwork for Judge Horkowitz.

16 Q Okay. So you walked back to JIS, made up the
17 report -- the paperwork for Horkowitz and then took him
18 over to Horkowitz; is that right?

19 A Correct.

20 Q And still up to this point Danny Villegas has
21 not confessed, right?

22 A Correct.

23 (Exhibit No. 19 was marked for identification.)

24 Q And I'm just going to show you what we'll mark
25 as Exhibit 18 [sic]. This is the -- the call record.

1 And this is the -- the document that says that Danny
2 came at 12:26 a.m. Do you see that? To the intake
3 officer.

4 A Yeah.

5 Q Okay. So certainly as of 12:26 a.m., Danny
6 Villegas has been neither questioned nor confessed,
7 right?

8 A Correct.

9 Q And so as of 12:05 a.m., Danny Villegas has not
10 confessed and not been questioned, right? Correct?

11 A I -- repeat that again.

12 Q Yes. So as of 12:05 a.m., Danny Villegas has
13 not been to the intake officer, and so he has not been
14 questioned, and he has not confessed; is that correct?

15 A I don't know, sir. I'm not --

16 Q As of 12:05 a.m. on April 22nd, he has -- Danny
17 has not seen the intake officer yet, right? Because we
18 just looked at Exhibit 18 [sic] showing that he saw the
19 intake officer at 12:26, right?

20 MR. MARTINEZ: Objection. Excuse me. Excuse
21 me. Objection. Objection. Form.

22 Q Right?

23 MR. MARTINEZ: Objection. Form.

24 A I don't -- sir, I don't recall. I know he sees
25 the intake officer first before we go to Judge

1 Horkowitz.

2 Q Right. But we just looked at the document
3 showing that at 12:26 that's when he saw the intake
4 officer, right?

5 A Can I look at it again please?

6 Q Of course. Sorry. Wrong number. 12:26 a.m.
7 Do you see that?

8 A Correct.

9 Q So 12:05 a.m., Danny Villegas has not been
10 questioned and has not confessed, right?

11 MR. MARTINEZ: Objection. Vague.

12 A I don't know about that notation. No, sir. I
13 don't -- I can't answer that question.

14 Q What -- what notation? What are you talking
15 about?

16 A I'm talking about 12:26 a.m. arrived with
17 Daniel Villegas for probable cause as --

18 Q "As youth wants to give a confession. Probable
19 cause was established."

20 A Correct.

21 Q Well, what do you -- what's your confusion,
22 sir?

23 MR. MARTINEZ: Objection. Vague.

24 Q Did you beat Danny Villegas?

25 A No, sir.

1 Q Did you strike him in any way?

2 A No, sir.

3 Q How did you interrogate him? Tell us.

4 A The same way I do all my interrogations.

5 Q Which is what, sir?

6 A I let them tell me what's going on or what
7 happened in his own words. I don't take any notes.
8 Once we finish taking the notes, then we go over it, and
9 we start all over again and then it's question and
10 answer with -- I let him narrate it. I try to type it
11 as -- as best as possible. If he's going too fast, slow
12 him down. I need to repeat it. Got to ask him to
13 repeat it, and it's a question and answer. There is a
14 lapse between what he did right after this, then ask him
15 what did you do right after this. That's the way I
16 do -- conduct my investigation -- my interrogations or
17 my report. My confessions.

18 Q And so you didn't -- you didn't accuse him of
19 anything, right?

20 A No, sir.

21 Q You used no interrogation technique to obtain
22 his confession, right?

23 MR. MARTINEZ: Objection. Vague.

24 A The only interrogations that -- if you want to
25 call them techniques. I didn't bombard him. I didn't

1 accuse him. I spoke to him. Offered him a coke. Or he
2 was offered a coke and that's it.

3 Q And so when you -- were you asked to train
4 other officers in how to conduct interrogations?

5 A Sometimes.

6 Q And when you trained other officers in how to
7 conduct interrogations, is that what you tell people to
8 do? Just ask them what happened?

9 A I tell them to go through whatever they're --
10 go through with the -- with the suspect and let you know
11 in their own words what happened, what transpired. When
12 you go back, the same thing. Make sure that you -- any
13 lapses or anything that -- that -- he jumps from one
14 point to another, try to bring him back, and fill up
15 that point.

16 Q So if there is any missing details, then you
17 should, you know, ask about those missing details so you
18 can find out what they are, right?

19 A No, sir.

20 Q No. Why don't you want to know about the
21 missing details?

22 A I'm talking about the -- not the necessary
23 missing details. Wherever he lapsed. From the type of
24 the car and then they took off. Okay. Where did you
25 go? That's -- I want to know where he went after he

1 took off.

2 Q Right. And he -- well, do you want to know
3 about missing details?

4 A Yes.

5 Q Okay. Did you -- how long did you spend
6 establishing rapport with Danny Villegas?

7 A I would say about -- maybe ten minutes.

8 Q Okay. What did you guys talk about?

9 A What was he up to. Who [inaudible] -- just
10 basic. Basic idea.

11 Q What did he say?

12 A I don't recall what he said, sir.

13 Q Did you threaten Danny Villegas that he'd get
14 the electric chair?

15 A No, sir.

16 Q Had you ever threatened anyone that you'd --
17 you give them the electric chair?

18 A No, sir.

19 Q Did you threaten Danny Villegas that he'd be
20 raped?

21 A No, sir.

22 Q Now, you know that Danny Villegas, Rodney
23 Williams, and Marcos Gonzalez all confessed to this
24 murder, right?

25 A I don't recall, sir. I couldn't -- I don't

1 know.

2 Q You don't know who confessed?

3 A Sir, I did not take the statements. I really
4 don't know. I know we arrested them but whether they
5 gave a confession, I'm not -- I'm sure that they did.

6 Q Well, we just looked at Rodney Williams
7 confession, right?

8 A Correct.

9 Q You know he confessed to murder, right?

10 A Correct.

11 Q And Marcos Gonzalez confessed, right?

12 A Correct.

13 Q All three of them say that they committed these
14 murders with Popeye and Droopy, right?

15 A I don't recall.

16 Q Well, Danny Villegas, he says he did it with
17 Popeye and Droopy, right?

18 A I'd have to look at the statement. I don't
19 recall right off the bat.

20 Q You don't remember after testifying nine
21 different times whether Danny Villegas confessed to
22 committing a murder with two people who were either
23 incarcerated or on electronic monitoring at the time?
24 Is that what you're telling us?

25 A I remember their names. I don't recall exactly

1 what he said. I'd need to look at the statement. If he
2 says they were there, they were there.

3 Q But I'm -- I'm just wanting to get this
4 straight. After reviewing the paperwork including the
5 statement you took from Danny Villegas in advance of
6 this deposition and all of your transcripts, four
7 different times, you're saying as you sit here today,
8 you don't remember that Danny Villegas confessed to
9 committing the murder with Popeye and Droopy?

10 A No. I'm not going to say that.

11 Q All right. So you -- you know that Danny
12 Villegas confessed to committing the murder with Popeye
13 and Droopy, right?

14 A Yes.

15 Q Yeah. I mean -- and you know that Marcos
16 Gonzalez confessed to committing the murder with Popeye
17 and Droopy, right?

18 A I know Marcos confessed, but I don't -- I
19 don't -- I have not read his confession.

20 Q So you don't remember that there is an issue
21 with all three of these guys saying that they committed
22 a murder with -- with one guy who was incarcerated at
23 the time of the murder and another guy who was on
24 electronic monitoring at the time of the murder and
25 couldn't have been there?

1 A We found that out after an investigation.

2 (Exhibit No. 20 was marked for identification.)

3 Q Yes. So -- well, let's end the suspense and
4 I'll show you Marcos' -- here is his second confession,
5 which we'll mark as Exhibit 19 [sic]. And he says he's
6 in the car with the other guys, Danny, Popeye, who is
7 Enrique, Rodney Williams, and another guy named Droopy.
8 Not Snoopy like I said earlier. Do you see that?

9 A Read it again. Or I can see Droopy, Snoopy.

10 Q "I was in the car with the other guys, Danny,
11 Popeye, Rodney Williams, and another guy named Droopy."
12 Do you see that?

13 A Correct.

14 Q All right. So all three of these guys, Rodney,
15 Marcos, and Danny are saying they committed a murder
16 with a guy who is incarcerated and a guy who is on
17 electronic monitoring at the time who could not have
18 committed the murder, right?

19 A Correct. [indiscernible]

20 Q So do you think that Danny, Marcos, and Rodney
21 all conspired together to come up with a story that they
22 would confess to murder and name Popeye and Droopy as
23 being with them?

24 A I can't answer that. I don't know.

25 Q Do you have any explanation for why all three

1 of the people would say that they were with two guys who
2 could not have been in -- at the murder scene with them?

3 A I can't explain that. I don't know.

4 (Exhibit No. 21 was marked for identification.)

5 Q So in the early morning hours -- we'll mark
6 this as Exhibit 20 [sic]. All right. This is an
7 interview with Fernando Lujan. That's Droopy, right?

8 A What we call [inaudible] Droopy. Yes.

9 Q Yeah. So -- well, he's the guy who was not in
10 prison or not in the juvenile detention center, right?

11 A I was referring to -- I don't know which one is
12 put away, which one is -- whatever. I don't know. Go
13 ahead.

14 Q All right. So we've got a report by Charlie
15 Ortega at six -- written at 5:58 a.m., right?

16 A Yeah.

17 Q And he's got 600 hours here. It says, "Upon
18 questioning, it was found that it was possible that the
19 juvenile might not have been involved directly in this
20 offense." Do you see that?

21 A Correct.

22 Q And that's because he was on electronic
23 monitoring at the time. So we can track where he was,
24 and that poses a problem for a confession that says that
25 they committed a crime with Mr. Lujan, right?

1 A Repeat that again, sir. Please.

2 Q If three different people say they committed a
3 crime with somebody who could not have been present for
4 the crime, that makes you think maybe the main
5 confessions aren't reliable, right?

6 A No. I wouldn't say that. No, sir.

7 Q No? Do you think that make the confessions
8 more reliable?

9 A I wouldn't say that either.

10 Q Okay. Well, did you want to know as a
11 detective why all three of these guys were saying they
12 were committing these -- this murder with two guys who
13 could not have been present at the same scene?

14 A I mean, I don't know what they said. It's
15 their statement.

16 Q Yeah. But like we talked about earlier. If I
17 was a detective, you want to know from the -- you wanted
18 to know whether it's reliable. So you want to go back
19 and find out why the -- the people are saying that there
20 is two people who could not have been with them at the
21 time the murder, and their confessions.

22 A I can't answer that.

23 Q Well, are you saying you didn't want to know
24 why you have three suspects all saying they committed
25 murders with two people who -- it was impossible for

1 them to be present at the time of the -- at the site of
2 the murder?

3 A No. I'm not saying that I -- I can't answer
4 that. I don't know why they said what they said.

5 Q Right. So did you ask them?

6 A No. I did not.

7 Q Okay. Why didn't you, as part of your
8 investigation, go to Danny Villegas when you found out
9 about 6:00 a.m. that the other two people might not have
10 been involved in the murder? Why didn't you ask him why
11 he was claiming these two people were involved when they
12 weren't involved?

13 A They didn't.

14 Q Well, did you ask Rodney?

15 A I don't recall.

16 Q Did you want to know from Rodney why he was
17 naming Popeye and Droopy?

18 A I believe I tried to talk to Rodney again, and
19 he didn't want to speak to us anymore.

20 Q Right. So -- and -- and he didn't -- Rodney
21 didn't want to give a statement, right?

22 A Correct. Yes.

23 Q And so tell us everything that Rodney said to
24 you and everything you said to Rodney when you spoke to
25 him again later that morning on April 22nd, 2000 --

1 1993?

2 A That I recall, it was -- I asked -- I asked him
3 again about his statement, and his first statement was
4 that, I do not want to give another statement. That's
5 what I said and that is the truth.

6 Q So he told you that his statement was the
7 truth?

8 A Yes.

9 Q All right. You were supposed to take him to
10 the magistrate before asking him any questions about the
11 murder, right?

12 MR. MARTINEZ: Objection. Vague.

13 Q Rodney was a kid, right?

14 A I believe he was at the JIS. I'm not sure.
15 But we did get permission to talk to him.

16 Q He was 15. Fifteen year olds you're supposed
17 to talk -- take to the magistrate before questioning,
18 right?

19 A Yes.

20 Q So you didn't question him about the murder,
21 did you?

22 A I did not question him about the murder. I
23 went back and I believe it was at JPD.

24 Q Was anyone else present when you talked to
25 Rodney Williams?

1 A I don't recall, sir.

2 Q And all he told you was that his confession was
3 the truth, right?

4 A Right.

5 Q He didn't change who was present, right?

6 A Correct.

7 Q He didn't say, "Oh, actually, it was just me
8 and Marcos and Danny", right?

9 A No. He did not.

10 (Exhibit No. 22 was marked for identification.)

11 Q All right. Did it concern you at all that --
12 well, let's actually -- let me strike that. And let me
13 show you Mr. Villegas' confession. We'll mark this as
14 21 [sic]. Do you know whose handwriting it is here?
15 The time?

16 MR. MARTINEZ: You're not screen sharing, Russ.

17 A I can't -- I can't.

18 Q Oh, I'm so sorry. It's late. I'm allowed.
19 Okay. Now I'm showing you Exhibit 21 [sic]. This is
20 Danny Villegas' confession. And do you see the -- where
21 it says on the 22nd day of April 1993 at -- and then
22 there is a time here. Whose handwriting is that?

23 A I believe it's mine. I'm not sure.

24 Q Who --

25 A No. That not my handwriting. The time?

1 Q That's not your handwriting?

2 A No, sir.

3 Q Do you know who altered the time?

4 A No, sir.

5 Q Do you know when that was done?

6 A I don't know if that's was a mistake and
7 somebody wrote over it or -- but it was not -- it's not
8 my handwriting. No.

9 Q Were you asked to initial that change?

10 A Not my handwriting. I did not initial it.

11 Q But you initial up top, right?

12 A Those -- those are mine. Yes.

13 Q Yeah. All right. So this is all
14 information -- all of it came from Danny Villegas and
15 you suggested none of it to him, right?

16 A Say again, sir, please.

17 Q All of the information in this document came
18 from Danny Villegas and none of it was suggested to him
19 from you, right?

20 MR. MARTINEZ: Objection. Vague.

21 A Correct.

22 Q And the way that you obtained this confession
23 was simply asking him to tell you what happened, right?

24 A At first, yes.

25 Q Were there any gaps that you had to question

1 him about to find out what he knew?

2 A I -- I don't recall.

3 Q All right. Did you want to know what happened
4 to the murder weapon?

5 A Yes.

6 Q Did you ask him what happened to the murder
7 weapon?

8 A I don't recall.

9 Q If you asked him what happened to the murder
10 weapon, would you document that?

11 A It is --

12 Q What he said?

13 A In his statement, yes.

14 Q Okay. Is there any reason why you wouldn't ask
15 him what happened to the murder weapon?

16 A No.

17 Q Because you wanted to recover that gun, right?

18 A Yes.

19 Q Did he tell you that somebody else fired?

20 A I don't recall. I have to read it and see if
21 he did. I don't recall.

22 Q All right. Showing you what we marked as 21.
23 If we look down at [inaudible]. Danny's confession
24 says, "Someone in the car yelled, 'He saw my face. He
25 saw my face. Finish him off.' They were talking about

1 Mando. Someone did finish him off." Do you see that?

2 A Yes.

3 Q Who did Danny Villegas say finished off Mando?

4 A He didn't.

5 Q Well, did he say that they used a different
6 gun?

7 A No.

8 Q Well, how did it happen?

9 A I don't know, sir. That's his statement.
10 That's what he gave.

11 Q What did he tell you about how the person
12 finished off Mando?

13 A It's not in the statement. I don't know.

14 Q Well, how do you know they didn't use a
15 different gun?

16 A I never said he used a different gun.

17 Q I'm asking you how do you know he did not use a
18 different gun?

19 A I don't.

20 Q You don't. So it could have been a different
21 gun, right?

22 A I can't answer that question. I don't know.

23 Q What did Danny do with the gun after he fired
24 it?

25 A I don't recall if he -- if I asked him or if he

1 told me.

2 Q But it's the murder weapon. You want to know
3 where the murder weapon went, right?

4 A Yes.

5 Q Because you're looking for some corroboration
6 from an outside fact that you can use to prove the
7 confession is -- is true, right?

8 A Yes.

9 Q And you want to corroborate whatever you can,
10 right?

11 A Yes.

12 Q So, for example, you want Danny Villegas to
13 corroborate that he told David Rangel that he committed
14 the murder, right?

15 A I never asked him who he told.

16 Q I understand you didn't, sir, but I'm saying
17 that as a detective, if you're truly investigating a
18 case, you want to corroborate that Danny actually told
19 David Rangel the information that Rangel reported,
20 right?

21 A Yes.

22 Q Okay. And you never asked Danny about his
23 conversation with David, right?

24 A No.

25 Q No. You did not?

1 A No.

2 Q That's correct?

3 A That's correct. No. I did not.

4 Q And Danny says there is about five or six shots
5 fired, right?

6 MR. MARTINEZ: Objection. Vague.

7 A That's what he said on the statement.

8 Q Yeah. There are is about five or six shots
9 fired?

10 A Yes.

11 Q And you found six casings at the scene, right?

12 A Yes.

13 Q All the same spot, right?

14 A Yes.

15 Q And so -- all right. You believe that these
16 confessions are consistent with one another; is that
17 right?

18 MR. MARTINEZ: Objection. Vague.

19 A Repeat that again please.

20 Q Well, you believe that the confessions are
21 consistent with one another, right?

22 MR. MARTINEZ: Objection. Vague.

23 A I took one. Somebody else took the other. If
24 they're consistent, they're consistent. If they're not,
25 they're not.

1 Q Danny didn't say anything about wrapping the
2 gun in a cloth or unwrapping it from a cloth, right?

3 A No. I don't recall.

4 Q Danny said they were in a white car that
5 belonged to Popeye, right? Right?

6 A I'm looking to see on the statement, sir.

7 Q Oh, I'm so sorry.

8 MR. MARTINEZ: Al, if you need to read the
9 whole thing, you can just stop and read the whole thing.

10 A Yes.

11 Q Okay. Was Danny uncooperative at any point?

12 A No.

13 Q Do you have any explanation for why all three
14 boys say they committed a murder with two people who
15 could not have been there?

16 A No.

17 Q Did you ask Danny -- did you want to know whose
18 car it was if it wasn't Popeyes?

19 A In the statement he said it was Popeyes I
20 believe.

21 THE REPORTER: Repeat that.

22 A I said, his statement it says it was Popeyes.
23 That's the statement he gave.

24 Q Right. But we know that Popeye wasn't there,
25 right? Yes?

1 A Yes.

2 Q So -- so what makes you think the confession
3 is -- is reliable?

4 A From what he told me, I believe the confession
5 is reliable because he had information that nobody else
6 would have known.

7 Q What information?

8 MR. MARTINEZ: Objection. Asked and answered.

9 A The number of shots, the direction of where
10 the -- where one of the victims ran to, and the
11 direction that the car followed and so forth.

12 Q What was the direction that the car followed?

13 A North, I believe, on -- on Electric.

14 Q All right. Where does -- where does he say
15 that he -- he drove north on Electric?

16 A It doesn't. It just said he -- I would assume
17 that he didn't say that.

18 Q So I'm -- I'm trying to find out where do these
19 non-public facts that, you know, we got the number of
20 shots fired. What else?

21 A Say again please.

22 Q What are these non-public facts that are in the
23 confession that make it reliable?

24 A The number of -- of shots that made -- that
25 were out there. The -- the direction of where the --

1 one of the victims ran to. The fact that the -- the
2 other two witnesses and the other fact witnesses said
3 they were followed. Nobody knew that except us and the
4 witnesses.

5 Q And Mike Johnston, right?

6 A Well, according to the statement he gave us,
7 yes.

8 Q Where does it say in the confession that he --
9 he chased the other two?

10 A Can you scroll to the very end please? It
11 doesn't.

12 Q All right. So the only thing that the
13 confession that's not public is the number of shots and
14 that Mando ran towards the house, right?

15 A Correct.

16 Q And the fact that it was a white car isn't
17 consistent with the crime scene evidence, right?

18 MR. MARTINEZ: Russell, you broke up. Will you
19 say it again?

20 Q I'm sorry. The fact that it's a white car is
21 not consistent with the crime scene evidence, right?

22 A The crime scene evidence that was recovered had
23 nothing to do with the car.

24 Q The white car is inconsistent with the
25 statements by the eyewitnesses to the murder, right?

1 A Correct.

2 Q The fact that they drove off and tried to
3 finish off Mando and then someone else did finish him
4 off is inconsistent with the casings all found in one
5 spot, right?

6 A Correct.

7 Q It's inconsistent with Mando being shot in the
8 front not the back, right?

9 MR. DENTON: Objection. Misstates facts not in
10 evidence.

11 Q Right?

12 A If I may, I did not make that autopsy report
13 nor the report itself. By looking at it like that, I'd
14 have to just go with what it says, so I -- going to have
15 to answer that I'm assuming, but I don't know if it's
16 consistent with what the -- what the medical examiner
17 may advise.

18 Q Right. The medical -- the autopsy examiner
19 says he was shot twice in the front.

20 A I don't agree that that's what it says.

21 Q So if the autopsy checklist shows he was shot
22 in the front then it's inconsistent with the confession
23 saying they chased him down and shot him, right?

24 A If it says what, sir?

25 Q If the autopsy checklist says that Lazo was

1 shot twice in the front, then that's inconsistent with
2 the confession saying that they chased him down and shot
3 him, right?

4 A I -- I can't -- I can't answer that, sir. I'm
5 not --

6 Q Well, why can't you answer that?

7 A Because I don't know. I'm going by this and I
8 don't know if they really went over there if it was
9 banging on a stack or other stack. I don't know.

10 Q I'm sorry. You don't know what?

11 A I don't know. I don't know where exactly Lazo
12 was shot. If he was shot twice at the same place or
13 shot once at the other place. There was no evidence to
14 prove because we didn't find any shells at the second
15 place.

16 Q Right. You didn't find any shells in the
17 second place. You didn't find any bullet holes in the
18 house, right?

19 A Correct.

20 Q There is no evidence of a second shooting,
21 right?

22 A That I can see, no.

23 MR. MARTINEZ: Objection. Vague.

24 Q And so it's inconsistent with Danny's statement
25 that he was -- that they were chasing Lazo and then

1 finished him off, right?

2 A There is -- that's his statement and that's all
3 I can rely on.

4 Q I know but it's inconsistent with the physical
5 evidence. That's what I'm saying. Right?

6 MR. MARTINEZ: Objection. Vague.

7 A Yes.

8 Q Danny didn't tell you where they went after the
9 murder?

10 A No.

11 Q Did you ask them? What did you do after the
12 murder?

13 A I don't believe so.

14 Q Why wouldn't you want to know where he went
15 after the murder?

16 A I didn't ask him that.

17 Q Why -- why didn't you want to know where he
18 went after the murder?

19 A I didn't ask him.

20 Q I'm aware that you did not ask him, sir. We've
21 established that. I'm trying to find out, did you want
22 to know where he went after the murder? Can you answer
23 the question?

24 A I'm -- the only things I didn't ask him. If I
25 wanted to, I didn't ask him.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q All right. I'm not -- you know, you're talking
2 about whether you did or didn't ask him. I know you
3 didn't. It's not in the statement and that's
4 established. I'm trying to find out, as a detective, as
5 a homicide detective, did you want to know where the
6 five killers went after this murder?

7 A Yes. I wanted to know. I did not ask him.

8 Q Why didn't you ask him?

9 A I don't know, sir.

10 Q Why did you want to know where they went after
11 the murder?

12 A If I --

13 MR. MARTINEZ: Objection. Asked and answered.

14 A I didn't ask him. If I -- if I -- I failed to
15 ask him, I did not ask him where they went after.

16 Q Was it supervisors who asked you it help other
17 detectives with their interrogation or confession taping
18 skills?

19 A On different cases?

20 Q Is that true?

21 A Say that again please.

22 Q Yeah. Sorry. In different cases. Just in
23 general. Did supervisors ask you to help them -- to
24 help other detectives with their interrogation skills?

25 A I don't -- if there was just -- I don't believe

1 the instruct them or help them, but, you know, if he
2 needs help, help him out.

3 Q Tell me why you wanted to question Rodney
4 Williams a second time.

5 A I don't -- I don't recall, sir.

6 Q Do you remember that it was at 6:30 in the
7 morning that you gave Rodney his -- his warnings?

8 A Again, I don't -- I don't recall if it was 6:30
9 in the morning. I may have but I just can't --

10 Q Did you want to know how it was that he was
11 confessing to murder with two people who -- it was an
12 impossibility that he could have been with?

13 MR. MARTINEZ: Objection. Asked and answered.

14 A I believe that was the reason I was asked to
15 trying to talk to him and he said, no. He didn't want
16 to talk to us anymore, and the statement that he had
17 given us was what was the truth.

18 Q So if you wanted to re-question Rodney about
19 Popeye and Droopy, why didn't you re-question Danny
20 Villegas and Marcos Gonzalez about Snoopy and Droopy --
21 Popeye and Droopy?

22 A I don't know, sir. I didn't question them. I
23 don't know.

24 Q Was there anything preventing you from
25 questioning Danny Villegas and Marcos Gonzalez a second

1 time?

2 A No.

3 Q A third time for Marcos.

4 A No.

5 Q How did you come to be talking to Marcos

6 Gonzalez at 5:25 in the afternoon?

7 A I don't recall, sir.

8 Q Had anyone directed you to Marcos Gonzalez

9 before speaking to David Rangel?

10 A I don't recall.

11 Q Were you ever given any awards by the El Paso

12 Police Department?

13 A Accommodations. I received a meritorious
14 award. As far as basic -- basic police officer,
15 intermediate, all the way up to master's degree and --
16 not master's degree. Master detective and I made it all
17 the way up to there.

18 Q Were you given any awards for obtaining

19 confessions?

20 A No. Just letters of commendation.

21 Q And were you giving letters of commendation for

22 obtaining confessions?

23 A Having the case and obtaining confessions.

24 Yes.

25 Q How many -- how many letters of commendation?

1 A That I know of specifically, is three.

2 Q And were those all in confession cases?

3 A Yes.

4 Q Did you receive any letters of commendation for
5 other types of cases?

6 A I don't recall, sir.

7 Q Did you receive a letter of commendation for
8 this case?

9 A No. I did not.

10 Q Do you know why that is?

11 A No, sir.

12 Q Were your supervisors supportive to you?

13 A Yes.

14 Q How about your commencing? Were they
15 supportive to you as well?

16 A Yes.

17 Q Did your supervisors prevent you from carrying
18 out your job in the way you wanted to do it?

19 A I don't understand the question. I don't think
20 I can.

21 Q Like did anybody from a supervisor tell you you
22 shouldn't do things that way, don't do things that way,
23 do it a different way?

24 A No.

25 Q All right. Was the internal affairs process at

1 the El Paso Police Department, fair?

2 A I believe so. Yes.

3 Q Because of the internal affairs department and
4 the El Paso Police Department, did you change the way
5 you -- you investigated cases in any way?

6 A No.

7 Q You were accused of perjury by an attorney in a
8 case; is that right?

9 A In a case. Yes.

10 Q Were you questioned by the internal affairs
11 division?

12 A No.

13 Q You refused to be questioned by them at first,
14 right?

15 A I believe internal affairs was not handling the
16 case or the -- the report.

17 Q Well, eventually internal affairs did
18 investigate, right?

19 A Yes.

20 Q And you did not give a statement to them,
21 correct?

22 A To internal affairs, yes.

23 Q You did or you did not?

24 A I gave them -- I gave them a statement when
25 they started investigating.

1 Q All right. And up until then, you refused to
2 talk, right?

3 MR. MARTINEZ: Objection. Vague.

4 Q Meaning you inserted your Fifth Amendment right
5 to silence, right?

6 A No. I did not.

7 Q When internal affairs questioned you about the
8 perjury complaint, did they do that in person?

9 A Yes.

10 Q Did they take a statement from you?

11 A They gave him a statement. Yes.

12 Q Who wrote out the statement? Did you do it, or
13 did they do it?

14 A I did it.

15 Q You wrote out your own statement?

16 A Yes.

17 Q And then you signed it?

18 A Yes.

19 Q And you were aware that other officers were
20 saying you testified falsely at the hearing, right?

21 A Yes.

22 Q And -- and even though other police officers
23 were saying that you testified falsely, you were still
24 not disciplined in that case, right?

25 MR. DENTON: Objection. Vague.

1 Q Right?

2 A It was -- it was investigated [indiscernible]
3 went to the grand jury and [indiscernible].

4 THE REPORTER: What? Repeat that.

5 A It was investigated by internal affairs after I
6 [indiscernible] to the grand jury where I was no billed.

7 Q No billed is what he said. And internal
8 affairs did not -- did not discipline you even though
9 there are other police officers saying you had perjured
10 yourself, right?

11 MR. DENTON: Objection. Assumes facts not in
12 evidence.

13 Q What was that?

14 A I was not disciplined.

15 Q Did you fear the internal affairs process when
16 you were being investigated for the perjury complaint?

17 A Did I what, sir?

18 Q Did you fear that you might be disciplined?

19 A No.

20 Q Why not?

21 A Because I felt I had done -- done nothing
22 wrong.

23 Q And so even though other police officers were
24 saying you perjured yourself -- yourself, that internal
25 affairs was investigating, you didn't have any concern

1 that you were going to be disciplined, right?

2 MR. DENTON: Objection. Assumes facts not in
3 evidence.

4 A Right. That's not what I said. I said that I
5 did not feel that I had done anything wrong. Whether it
6 was an attorney. Yes.

7 Q I understand. I just meant that even though
8 there are other people, you know, other police officers
9 saying you had committed perjury, that still didn't make
10 you think that internal affairs was going to discipline
11 you, right?

12 MR. DENTON: Same objection.

13 A No. I don't have -- I have no say -- no say
14 about what internal affairs comes up with or decides or
15 recommends.

16 Q Right. It's out your hands, right?

17 A I'm sorry?

18 Q It's out of your hands?

19 A Yes.

20 Q But you did not fear that internal affairs
21 would discipline you even though other officers were
22 saying you perjured yourself, right?

23 A No, sir. I did not -- I wasn't feeling that
24 way.

25 Q Okay. Have you ever feared the internal

1 affairs department at the El Paso Police Department?

2 A I would say no.

3 Q Have you ever altered how you investigate --
4 investigated a case because of internal affairs?

5 A No.

6 Q If there is an internal complaint against
7 multiple police officers, are you allowed to talk to the
8 other officers about the incident?

9 A I would say no, but I don't know if there is a
10 written rule.

11 Q How do you learn that internal affairs is
12 investigating a complaint?

13 A They file a complaint. Give it to the
14 supervisor. The supervisors tells us that there's been
15 a complaint filed and from there the ball starts
16 rolling.

17 Q Have you ever learned about internal affairs
18 complaints before internal affairs told you?

19 A No.

20 Q Have you ever used excessive force against a
21 suspect?

22 A Excessive force? No.

23 Q Yes.

24 A No.

25 Q Have you ever observed another police officer

1 commit excessive force?

2 A No.

3 Q Have you ever served another police officer
4 misconduct?

5 MR. MARTINEZ: Objection. Vague.

6 A I would say no.

7 Q You had an obligation to report any police
8 officer you saw committing misconduct to internal
9 affairs; is that right?

10 MR. MARTINEZ: Objection. Vague.

11 A There may be a rule, but I don't know it if
12 that's the case.

13 Q Did you ever report any officer to internal
14 affairs?

15 A No.

16 Q Were you ever aware of another police officer
17 abusing the suspect during an interrogation?

18 A No.

19 Q Were you ever aware of another police officer
20 fabricating a witness's statement?

21 A No.

22 Q Were you ever aware of another police officer
23 abusing a witness in a case?

24 A No.

25 Q Were you ever notified that internal affairs

1 had sustained a complaint against a detective for their
2 conduct during an interrogation?

3 A A detective or?

4 Q Any detective.

5 A One.

6 Q One? Which one?

7 A I mean, what -- filed against me I believe.

8 Q What's that?

9 A Against -- if you're talking about me, yes. I
10 believe there was one.

11 Q What were you disciplined for?

12 A Oh, I wasn't disciplined. No. I'm sorry. I
13 thought you said filed upon.

14 Q No. Sorry. Were you ever -- did you ever
15 learn that internal affairs had sustained a complaint
16 against a detective for abusing a suspect during an
17 interrogation?

18 A I was not privy to that. It's up to the
19 detective, but I don't -- or the officer. I don't know
20 if he wants to go tell everybody else himself.

21 Q I'm just asking the question, sir. Did you
22 ever learn of another officer being disciplined or -- or
23 having a complaint sustained for abusing a suspect
24 during an interrogation?

25 A No.

1 Q Did you ever learn that another detective had
2 been disciplined for abusing a witness when questioning
3 a witness --

4 A No.

5 Q -- When questioning?

6 A I'm sorry. No.

7 Q Do you own your own home?

8 A Yes.

9 Q And what's the value of that home?

10 A About 169,000.

11 Q Did you have a mortgage on the home?

12 A Yes.

13 Q What's the mortgage approximately?

14 A That I owe?

15 Q Yes.

16 A 30 to 40,000.

17 Q Do you have any income?

18 A Just my pension checks, social security.

19 Q And what's the monthly income that you have
20 from pension, social security?

21 A Social security 600 and some odd dollars.
22 County pension is about two -- 2,000, and the police
23 pension is about 4,000.

24 Q Do you own any vehicles?

25 A Yes.

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 Q How many vehicles do you own?

2 A Four.

3 Q What vehicles do you own?

4 A I own a -- a '97 Chevrolet pick-up -- pick-up.

5 I'm sorry. It's either a '97 or '93 pick-up. A '97 --

6 start from the beginning. It's a -- I got a '89

7 Corvette, a '93, I believe, BMW, '97 pick-up, and a 2003

8 SUV. Ford SUV.

9 Q Are you married?

10 A Yes.

11 Q And does your wife have any income?

12 A She works.

13 Q What kind of work does she do?

14 A She works at the county courthouse.

15 Q Do you have any children?

16 A Do I have children?

17 Q Yes.

18 A Yes, sir. I have two.

19 Q Do you -- do you support them in any way?

20 A No. They're grown and out of the house.

21 Q Do you support any -- any one other than you

22 and your wife financially?

23 A No.

24 Q Do you have any stocks or mutual funds?

25 A No.

1 Q Do you have any bonds?

2 A No.

3 Q Do you own any 401K accounts or any other
4 retirement accounts other than your pension and social
5 security?

6 A No.

7 Q Do you own any other real property other than
8 your home?

9 A No.

10 Q Do you own any items of value greater than
11 \$5,000 such as jewelery or collections or gun
12 collections or the like?

13 A No. I don't.

14 Q Do you own any recreational vehicles?

15 A No.

16 Q Do you have a certificates of deposit?

17 A No.

18 Q Do you have any bank accounts?

19 A Yes.

20 Q How many bank accounts do you have?

21 A I have a checking and a savings.

22 Q And do you have one of each?

23 A Yes.

24 Q And what's your average balance in your
25 checking account?

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 A At the end of each month after I finish the
2 bills, the average balance is about maybe between 2,000
3 and -- 2,000, 2,500. And in the checking I have
4 approximately \$2,000.

5 Q Do you have any other assets that we haven't
6 discussed that are worth more than \$5,000?

7 A No, sir. I don't.

8 Q Do you have any other sources of income that we
9 haven't discussed?

10 A No, sir. I don't.

11 Q Have you ever been suspended -- suspended by
12 the El Paso Police Department?

13 A Yes.

14 Q On how many occasions?

15 A I believe suspensions, twice.

16 Q And what were they for?

17 A One was for, I believe, mishandling of
18 evidence, and the other one was on -- I -- something to
19 the effect of I misused city funds.

20 Q All right. How were you alleged to have
21 misused city funds?

22 A I had gone on an investigation in Utah. We --
23 on the way after the investigation, we took out two
24 detectives that were assigned to us to help -- help us
25 out. Took them out to dinner. We paid for their

1 dinner. When we came back, we had to turn in all the
2 receipts. So we turned a receipt with the memo saying
3 that this money was used to pay for this guys dinner.
4 [indiscernible] Later on they came back and said, you
5 can't do this. You need to pay the money back. I paid
6 the money back. I wrote them a check. They gave them
7 the money back. Later on -- later on that weekend or
8 during the week, they said they had filed a misuse of
9 city -- city money. That we weren't allowed to do that,
10 so we got -- [inaudible] got suspended.

11 **Q And that was a complaint initiated by the**
12 **department; is that right?**

13 **A Correct.**

14 **Q And how much -- how long were you suspended**
15 **for?**

16 **A The initial suspension was 15 days. We took it**
17 **to arbitrations, and in arbitrations, they took away 12**
18 **days and gave us three only, because they said we were**
19 **not allowed to -- we weren't allowed to buy those**
20 **detectives dinner with city money.**

21 **Q And what were you alleged to have done wrong**
22 **with mishandling the evidence? The narcotics?**

23 **A The evidence -- I tagged some evidence, threw**
24 **it into my desk drawer. I arrested the person that had**
25 **the evidence, then I just simply forgot that -- it was**

1 late at night. I went home. [indiscernible] For I
2 don't even remember how long. They asked for it, and
3 they provided me the case number and the person, and I
4 went and told my supervisor this is what I did. I was
5 supposed to go get the evidence. He went with me,
6 picked up the evidence. We went downstairs, turned it
7 in, and then I got written up for mishandling of the
8 evidence.

9 Q Did you still have the evidence?

10 A Yes, sir.

11 Q What kind of drugs were they?

12 A It was a blue -- I don't know what the content
13 was of it. I believe it was heroin.

14 Q And how long were you suspended for that?

15 A I believe two days.

16 Q And so that was a complaint that was also
17 initiated by the department?

18 A Yes.

19 Q Were you ever disciplined for civilian
20 complaints?

21 A Yes.

22 Q What civilian complaint were you disciplined
23 for?

24 A I believe one was -- was a supposedly that I
25 was abusive, and that was the -- the initial complaint.

1 Aside from another [indiscernible] when I had a child in
2 the car that wasn't authorized and it stemmed from
3 there.

4 Q I'm sorry. And you were abusive in what way?

5 A She said I was verbally abusive to her.

6 Q Okay. And was there an investigation?

7 A Yes.

8 Q Did you give a statement?

9 A Yes.

10 Q Did you write up your own statement, or did you
11 submit a statement?

12 A I write my own.

13 Q And what was the result of that investigation?

14 A It was a -- it was a written reprimand. I'm
15 not sure but I got two chewed out for, you know, being
16 abusive. I don't believe I was, but that's the -- what
17 the complainant said.

18 Q All right. So you had a written complaint, a
19 written reprimand as a -- based on that written
20 reprimand that you received, did you alter the way that
21 you did your job at all?

22 A Yes.

23 Q How did you change?

24 A I made sure that I had no argue with anybody.
25 Just call the police like I did back -- back then during

1 that time if there was any hassle. But then I got
2 written up.

3 Q Did any of your fellow officers give a report
4 in that case as well?

5 A No.

6 Q Have you ever given a -- a report to internal
7 affairs that a fellow officer did something wrong?

8 A No.

9 Q Was that when you were in patrol?

10 A Well, my entire career I don't think I ever --

11 Q I'm sorry. I meant the -- the written
12 reprimand for being verbally abusive. Was that when you
13 were in patrol?

14 A No. I was a detective.

15 Q You were a detective?

16 A Yes.

17 Q All right. Did you tell Arbogast and Graves to
18 submit final reports in the case at the same time?

19 A I don't understand the question.

20 Q Your final report in this case was submitted on
21 May 5th, 1993. Do you remember that?

22 A Are you talking about my presentation
23 supplement?

24 Q Yes.

25 A Okay. Yes. I remember filing that.

The Deposition of ALFONSO MARQUEZ, taken on May 19, 2022

1 Q And Graves report is also submitted on May 5th,
2 1993. Are you aware of that?

3 A No, sir. I'm not aware of that.

4 Q Is that a coincidence or did you try to
5 synchronize the filing of your complaints?

6 A No. As a police agent, you were supposed to
7 put the files together. I don't know what
8 [indiscernible] they because I turn it in.

9 THE REPORTER: I need you to repeat the answer
10 and speak louder.

11 A Okay. As case agent, I get -- I get the files
12 together and put it all together, and I make sure that
13 all the detectives know that were working that at that
14 time, a certain time, I want to turn in all the files so
15 they're advised to turn in all the paperwork that they
16 had.

17 (Exhibit No. 23 was marked for identification.)

18 Q So I'm showing you Exhibit 20 -- what we'll
19 mark as Exhibit 22 [sic]. This is Graves presentation
20 report or his final report or whatever you call it. I
21 don't see anything in Graves report about two of the
22 people implicated in the murderer being incarcerated or
23 on electronic monitoring at the time of the murder and
24 couldn't have committed the murder. Do you?

25 MR. MARTINEZ: I missed that question. Can you

1 repeat that back, Ashley?

2 THE REPORTER: I missed it too.

3 Q Let me -- let me just strike that question and
4 ask a different one, sir. And -- and I'll show you your
5 own presentation report, because I think this one will
6 go easier. This is Exhibit 12 to your deposition.

7 All right. This is your presentation report
8 and -- and so in this report, would you expect to see
9 documentation that you investigated two of the five
10 people alleged to have committed the murder were
11 incarcerated or on electronic monitoring at the time of
12 the murder and could not have committed the murder?

13 A Sir, everything -- everything that I have on
14 that supplement report is based on everything that was
15 done. So sometimes I just, you know, I know it was
16 done, and it did look at the report. But the rest of
17 the case, you'll find it in there. That's my
18 supplemental report.

19 Q Where? Where is this documented anywhere that
20 Popeye and Droopy were incarcerated at the time of the
21 murder or on electronic monitoring and could not have
22 committed the murder?

23 A A witness statement or a supplement.

24 Q Would it surprise you to know that it's not
25 written down anywhere?

1 A I don't know, sir.

2 Q It's an absolute requirement that you, as a
3 police detective, write down the fact that the
4 confessions implicated two people who could not have
5 committed the murder, right?

6 MR. MARTINEZ: Objection. Calls for
7 speculation. Calls for a legal opinion. Lacks of
8 foundation.

9 A I took the confession and wrote the confession
10 is in there says is what he told me.

11 Q Who asked you that question? I didn't ask you
12 that question. Sir, I'm asking you, you have to write
13 down the fact that two of the five people implicated in
14 the murder could not have committed the murder, right?

15 MR. MARTINEZ: Objection. Calls for
16 speculation. Lacks an appropriate foundation. Calls
17 for legal opinion.

18 A I was -- I can't answer that. Maybe it was
19 done and it's not in this report.

20 Q Did I ask you if it was in this report?

21 A Maybe it was done. No, sir.

22 Q I will -- I'm just asking you. As a detective,
23 you had an obligation somewhere in the file to document
24 that the -- that two of the five people accused of the
25 murder could not have committed the murder, right?

1 MR. MARTINEZ: Same objections.

2 MR. DENTON: Objection.

3 (Simultaneous speakers)

4 A [inaudible]

5 Q Is there any explanation for why it was not
6 documented in your -- in the file that two of the five
7 people who are accused of the murder could not have
8 committed the murder?

9 A I don't know, sir.

10 Q Were you trying to hide that fact?

11 A No.

12 Q Did you tell anyone that fact?

13 A I think that fact was still with me, but I
14 don't recall who had told -- who had told them.

15 Q Did you tell any prosecutor that two of the
16 five people accused of the murder were -- could not have
17 committed the murder?

18 A I don't recall.

19 Q When you sought charge -- you sought charges
20 against Danny Villegas, right?

21 A Yes.

22 Q When you sought charges for Danny Villegas, how
23 did you go about doing that?

24 A The same as the JIS process.

25 Q Which is what?

1 A Interview them. Take them to JIS. Interview
2 them. See if he gives us a statement. And then go to
3 the intake officer, Judge Horkowitz, back to the intake
4 officer, back to Judge Horkowitz and then to be put in
5 JPD.

6 Q All right. Did you tell any of those people
7 that two of the five people Danny Villegas implicated in
8 the murder could not have committed the murder?

9 A No.

10 Q After Danny Villegas was charged, did you go
11 back to the prosecutor and say, I'm sorry, Prosecutor,
12 but we got a problem. Two of the five people indicated
13 by Danny Villegas, Rodney Williams, and Marcos
14 Gonzalez's confessions were incarcerated at the time
15 or -- or -- or could not have committed the murder?

16 A No.

17 Q Was there a reason why you didn't tell the
18 prosecutor that two of the five people implicated by
19 Danny Villegas were -- couldn't have committed the
20 murder?

21 A Repeat that again please.

22 Q Was there a reason why you didn't tell the
23 prosecutor that two of the five people implicated by
24 Danny Villegas could not have committed the murder?

25 A There was no reason that why we didn't tell

1 him. I believe -- well, we didn't tell him. We didn't
2 tell him.

3 Q All right. And -- and so I'm trying to find
4 out why you didn't tell him. Was there a reason you
5 didn't tell the prosecutor that two of the five people
6 implicated by Danny Villegas could not have committed
7 the murder?

8 A I'm thinking that that case I know we've been
9 turned over and further investigation didn't really --
10 really stop there. That's when we found out that I'm --
11 I believe. I'm not sure. That that's when we found out
12 that this guy was in -- was one was on a monitor and the
13 other one was incarcerated.

14 Q You -- you talked to a number of people who had
15 been incarcerated with Danny Villegas to try and find
16 out if he talked to other people about the case, right?

17 A When you say the number?

18 Q Yeah. A number of people.

19 A No.

20 Q Well, let me ask you about your trial
21 testimony. All right. This is your testimony from -- I
22 think it's the first trial. Yes. December 8th, 1994.

23 THE REPORTER: You're not sharing your screen.

24 Q I -- thank you. I'm -- I'm trying to kill the
25 time while I click through all the things I have to

1 clock through to get to them.

2 All right. Showing you that same testimony
3 that we talked about before from the first trial, and
4 I'm going to direct your attention to page -- page --
5 it's -- all right. So this is page 340, line two.

6 Question, "And why did you make that trip to
7 Huntsville, sir?"

8 Answer, "Because I was checking everybody that
9 had been incarcerated with Danny Villegas at the time
10 that we put him in jail up until the time that he got
11 released or to the time of this court."

12 Were you asked that question, and did you give
13 that answer?

14 A Yes.

15 Q And so you were checking everybody that had
16 been incarcerated with Danny Villegas at the time that
17 he was put in jail, right?

18 A I may have made a mistake. It was only one
19 person that we went to talk to.

20 Q You made a mistake when you testified over --
21 under oath at a murder trial? That's your explanation?

22 A This is what I testified to there, sir, which
23 recollection coming back, I know that we didn't check
24 everybody. We only talked about one. Checked one
25 person.

1 Q That was Onnie Kirk, right?

2 A Yes.

3 Q And --

4 THE REPORTER: Who?

5 Q Onnie, O-N-N-I-E, Kirk, K-I -- K-I-R-K.

6 And you got a statement from him, right?

7 A We received it from him. I did not take it.

8 Q All right. You were present for the statement
9 though, right?

10 A Yes.

11 Q And you asked whatever questions you wanted to
12 of Onnie?

13 A I'm sorry. You faded.

14 Q You could have asked him whatever questions you
15 wanted to ask him, right?

16 A Yes.

17 Q And so did you ask him, for example, when did
18 he have this conversation with Danny Villegas?

19 A No. I did not.

20 Q Did you ask him, "Where were you when you had
21 this conversation with Danny Villegas"?

22 A No.

23 Q Did you ask him whether he was on the same
24 floor as Danny Villegas when he had this conversation?

25 A No.

1 Q Why didn't you ask him those questions?

2 A I was not conducting the interview, sir.

3 Q Was there anything preventing you from asking
4 those questions?

5 A No.

6 Q Were you there and told to be silent?

7 A No.

8 Q Okay. So there is nothing stopping you from
9 answering -- asking those questions, right?

10 A No.

11 Q So then why didn't you ask Onnie Kirk when he
12 had this conversation, where he had this conversation,
13 and who was present?

14 MR. MARTINEZ: Objection. Asked and answered.

15 A I didn't ask him. No.

16 Q I'm aware you didn't. Why didn't you ask him?

17 A I was not conducting the interview.

18 Q And so you -- you now know that Onnie Kirk
19 wasn't incarcerated at the county jail until months
20 after Danny Villegas was incarcerated, right?

21 A I'm not aware. I don't know, sir.

22 (Exhibit No. 24 was marked for identification.)

23 Q Let me show you what we'll mark as Exhibit 23
24 [sic]. And this is an affidavit from Lieutenant James
25 D. Nance, an employee of the El Paso County Sheriffs

1 Office. Do you see that?

2 A Yes.

3 MR. JIM DARNELL: Can we take a short break
4 while he reads that? Bathroom purposes.

5 MR. AINSWORTH: Sure. Let's go off the record.

6 THE VIDEOGRAPHER: We are off the record. The
7 time is 6:07 p.m.

8 (Recess from 6:07 p.m. to 6:19 p.m.)

9 THE VIDEOGRAPHER: We are back on the record.
10 The time is 6:19 p.m.

11 Q All right. Detective, I'm showing you what we
12 marked as Exhibit 23 [sic]. Sorry. I have a -- I'm
13 sorry. I need to click back into it. Okay. Now I'm
14 showing you Exhibit 23 [sic]. Do you see that on Onnie
15 Kirk was not in custody at the El pass -- El Paso County
16 Detention Facility until July 26th?

17 A That he was in custody? Yes.

18 Q All right. And that's -- they were housed --
19 Onnie Kirk and Danny Villegas were housed together on
20 the second floor only for 15 days from September 15th
21 until September 29th, 1993?

22 A I don't -- when you say housed together, I
23 don't see that. I see housed on the second floor, but I
24 don't know if it's together.

25 Q I said housed together on the second floor.

1 Not they're -- not that they were housed in the same
2 cell, but that they were on the same floor for 15 days
3 from September 14th until September 29th, 1993, correct?

4 A Correct.

5 Q All right. So it would be important to know
6 when the conversation that Onnie Kirk claimed to have
7 with Danny Villegas happened, right? Right?

8 A Yes.

9 Q And it would be important to know where that
10 conversation was, right?

11 A Yes.

12 (Exhibit No. 25 was marked for identification.)

13 Q And let me show you what we'll mark as Exhibit
14 25, which is Onnie Kirk -- Kirk's statement. All right.
15 In Onnie Kirk's statement that you witnessed it says,
16 he, meaning Danny Villegas, "Also said that if he found
17 out who had talked, that he would get his gang to take
18 care of him." Do you see that?

19 A Yes.

20 Q And so Onnie and Villegas couldn't have had
21 this conversation until at least July and maybe not
22 until September, right?

23 A I don't know, sir.

24 Q Well, based on what we just saw about the dates
25 that they were housed at the jail together, they weren't

1 housed at the jail together until July, right?

2 A Correct.

3 Q And they weren't on the same floor until
4 September, right?

5 A Correct.

6 Q And so if Danny Villegas was charged in April
7 with this crime, do you think that he was still
8 wondering in July who had talked to the police?

9 MR. MARTINEZ: Objection. Calls for
10 speculation.

11 A I don't know what Danny was thinking.

12 Q Well, just as a police officer, were you, you
13 know, when you're hearing Onnie Kirk say that Villegas
14 was saying if he found out who talked, you know, did
15 that not make sense? Because you would think that Danny
16 Villegas would know who had spoken to the police from
17 that time?

18 A I don't know that, sir.

19 Q Well, and I -- I understand you can't know, but
20 did that just create a question in your mind as a
21 detective that it -- it seemed odd that Danny Villegas
22 would still be trying to find out who talked to the
23 police when you had documented statements from, you
24 know, David Rangel -- Rangel -- David Rangel, Rodney
25 Williams, and Marcos Gonzalez all on the file?

1 A I can't answer that, sir. I don't know.

2 Q And Onnie Kirk -- well, it says here in his
3 statement, "I was told that his name is Danny Villegas."
4 Do you see that?

5 A Yes.

6 Q Does that mean you told him, or that the police
7 who were questioning him told him that his name was
8 Danny Villegas and he didn't know that, or somebody else
9 told him that his name was Danny Villegas?

10 A I have no idea who told him his name was Danny
11 Villegas.

12 Q All right. But he's not saying that Danny told
13 him that his name was Danny Villegas, right?

14 A I don't know what he is referring to, sir.

15 Q Well, you were present for this conversation,
16 right?

17 A Correct.

18 Q Do you take this statement, "I was told that
19 his name was Danny Villegas", to mean that Onnie Kirk
20 and Danny Villegas -- or Danny had not introduced
21 himself to Onnie Kirk?

22 A I don't know.

23 (Exhibit No. 26 was marked for identification.)

24 Q Let me show you what we'll mark as Exhibit
25 No. 25 [sic]. Do you recognize this map?

1 A No, sir. I don't.

2 Q Do you know what's being depicted here?

3 A No, sir. I don't.

4 Q Do you know a Captain Reyes or did you?

5 A No, sir. I don't. I didn't now.

6 Q I'm sorry. For the record, Exhibit 25 [sic] is
7 Bates numbered DA 115472.

8 If you had the England/Lazo investigation to do
9 over again, would you do anything differently?

10 MR. MARTINEZ: Objection. Vague.

11 A No.

12 Q If it was up to you, would Danny Villegas still
13 be in prison?

14 A It's not up to me.

15 Q Right. That's why I prefaced my question. If
16 it was up to you, would Danny Villegas still be in
17 prison?

18 MR. MARTINEZ: Objection. Lack of foundation.
19 Calls for speculation.

20 A Yes.

21 Q And if it was up to you, would he spend the
22 rest of his life in prison?

23 MR. MARTINEZ: Objection. Lack of foundation.
24 Calls for speculation.

25 A If that was the sentence, yes.

1 Q Did you have any obligation to contact the
2 juveniles parents that they were being arrested for a
3 felony crime to let them know that they were being
4 arrested?

5 MR. MARTINEZ: Objection. Vague. Calls for
6 speculation.

7 A No. I don't recall that I was -- that I did.

8 Q Did you conduct any investigation to try and
9 find out whose car it was that Danny Villegas was in the
10 night of the murder?

11 A I believe we searched some cars, but I don't
12 recall how many we searched or which ones.

13 Q Did you search any cars after April 22nd, 1991?
14 Or 1993 to try and find the car that was used in the
15 murders?

16 A I don't recall.

17 Q Did you listen to an audio tape at Tony
18 Kosturakis' office?

19 A Yes.

20 Q Did it have evidence about the murder?

21 A It had the -- something we had already
22 investigated what he had. Investigated that stuff
23 already.

24 Q What stuff was it?

25 A I believe it was just whatever -- when we

1 read -- when I heard it, I said, okay. That's already
2 been done, and that's already been done and stuff like
3 that, but I don't recall exactly what.

4 Q So you obtained a copy of the tape to put into
5 evidence and said anybody looking at it could see, oh,
6 that's [indiscernible] that stuff that's already been
7 done in this investigation, right?

8 A No.

9 Q Why didn't you obtain a copy of the tape and
10 place it into evidence?

11 A I don't know.

12 Q Was there anything stopping you from obtaining
13 the tape and placing it into evidence?

14 A No.

15 Q Who were you with when you listened to the --
16 to the tape at Kosturakis' office?

17 A I remember Lieutenant Laredo and Judy Reece.

18 Q Why did you bring a lieutenant to listen to
19 this tape of somebody that had already been investigated
20 and done?

21 A He was the one that knew [indiscernible] and
22 was going to introduce us, and he said he'd go with us.
23 I mean not in the same car but he went with us.

24 Q So lieutenant asked to go run down this lead
25 that had already been run down before?

1 A He was the one that told us to go and -- and
2 talk to Kosturakis. If I knew him, I didn't know him.
3 I said, no. I know him. I'll go down there with you
4 guys. But he didn't do anything except take it home and
5 [indiscernible].

6 Q Did you meet somebody to go down an introduce
7 you?

8 A No. That was his -- to go to see Kosturakis.
9 THE REPORTER: To see what?

10 A To go see him because they were friends I
11 believe.

12 Q They were friends. Okay.

13 A I believe. I'm not sure.

14 Q Do you have any idea why lieutenant doesn't
15 remember going down to the office to see -- to listen to
16 the tape?

17 A No, sir. I don't.

18 Q You -- you should have inventoried that tape,
19 right?

20 A We did not pick it up.

21 Q Yeah. I -- that's -- that's what you're
22 saying. I understand that. But you should have picked
23 it up, right?

24 A Yes.

25 Q And then inventoried it, you know, maintained

1 it so that somebody else could listen to it, right?

2 A Yes.

3 Q Or at the very least document why you didn't
4 pick it up and what was on the tape, right?

5 A Yes.

6 Q And you didn't create any documentation
7 regarding that tape, right?

8 A No.

9 Q Did you take a statement written out by Marcos
10 Gonzalez and throw it away?

11 A No.

12 MR. BRITTAIN: Can you repeat that question? I
13 didn't hear what you said.

14 (Requested portion was read)

15 MR. BRITTAIN: Thank you.

16 Q Have you ever thrown away a statement from a
17 witness -- from a suspect before?

18 A No.

19 Q How many handwritten notes -- how many pages of
20 handwritten notes did you take in this case?

21 A I don't know, sir. I can't answer that. I
22 don't know.

23 Q Would you carry notebook paper with you to take
24 notes on when you were in the field?

25 A No.

1 Q Where would you have notebook paper?

2 A Maybe in a folder that we used to carry.

3 Q All right. So you'd carry the folder that had
4 notebook paper in it, right?

5 A Paperwork.

6 Q Yeah. So if somebody gave you an address, you
7 could write it down, right?

8 A Yes.

9 Q Would you jot it down?

10 A Write it down. Yes.

11 Q And -- and so you always had your clipboard
12 with you when you were investigating, right?

13 A Yes.

14 Q Have you had any contact with Rudy Flores since
15 the -- you spoke to him in April 1993?

16 A No.

17 Q What about any of the other witnesses in this
18 case? Have you had any other contact with them since
19 April of 1993 apart from Onnie Kirk?

20 A No.

21 Q Did you talk with the prosecutor about the
22 acquittal of Danny Villegas in 2018?

23 MR. MARTINEZ: Objection. Vague.

24 A No.

25 Q Did you talk to any other officers about Danny

1 **Villegas' acquittal?**

2 MR. MARTINEZ: Objection. Vague.

3 A No.

4 **Q Did you attend closing arguments in the 2018**
5 **trial?**

6 A No.

7 MR. AINSWORTH: All right. I don't have any
8 further questions for this witness.

9 You're muted, Lowell.

10 FURTHER EXAMINATION

11 BY MR. DENTON:

12 **Q Thank you. If you please and I'll go ahead.**
13 **Sir, I'm Lowell Denton. I'm representing the City of El**
14 **Paso in this case. Can you tell the jury when you**
15 **promoted to the rank of detective?**

16 A I think it was in '82, '81, '82.

17 **Q Very good. Very good. Tell the jury a little**
18 **bit about that process. What did you go through in**
19 **order to achieve that promotion to detective?**

20 A We had to take a written exam. They gave us
21 books to study. We studied and then we took the exam
22 and depended on how you -- where -- where you passed.
23 It -- it would put you in a -- a line or a group. And
24 depending where you were on that line, got promoted when
25 there was an opening for detective slot.

1 Q So it was a competitive examination for the
2 rank?

3 A Yes, sir.

4 Q What are the kind of materials that you had to
5 study for that test?

6 A I remember penal code, city ordinances. There
7 was a -- some math, English, report writing, some
8 comprehension -- comprehensive work. Stuff like that.

9 Q Very good. And did you study the city policies
10 that related to investigating crimes?

11 A Yes, sir.

12 Q All right. And then did the test that you took
13 cover the materials that you had read?

14 A Yes.

15 Q And did you perform well on the examination?

16 A I would say I performed descent to where I was
17 up the least in the 5, 6 or 7th category. Something
18 like that. I don't recall.

19 Q Very good. But the people that ultimately made
20 it took promotion, correct?

21 A Yes.

22 Q So what made you decide to compete for that
23 rank of detective?

24 A I had been in patrol for ten years, and I was
25 hoping to get out of shift work.

1 Q Very good. Did you have influencers in the
2 department or mentors?

3 A Yes. I did.

4 Q Who are they?

5 A I had -- that I look up to up to this day, I
6 have at least four. Rodrigo Gonzalez. He was in a
7 wheelchair. Lieutenant John Lanahan, Donald Worsick,
8 and Ernie Amos.

9 Q All right. About the time that you took that
10 detective examination, had you learned before that about
11 the investigative process for felony crimes?

12 A Yes.

13 Q How did you learn that?

14 A That was through regular patrol at the police
15 academy [indiscernible] boards of patrol. I -- at one
16 time, and I don't remember what the date, but at one
17 time though, I was asked to go to CAP, the Crimes
18 Against Persons, down there at Downtown. And -- by one
19 of my mentors which was Ernie Amos, and I worked with
20 CAP as a patrolman for about two months, and then I was
21 going to work one more month but the city said, no,
22 because then they would have to start paying me
23 detective pay, so I went back to patrol.

24 Q All right. And so did that wet your appetite
25 for being a detective?

1 A Yes, sir.

2 Q By the time that you took the detective exam,
3 had you studied and learned about the legal rights of
4 citizens in a criminal investigation?

5 A Yes, sir.

6 Q The courses that you took after you were
7 promoted, I'd like you to tell the jury a little bit
8 about that. Let's start with how many hours or however
9 you would best characterize this. How much learning did
10 you do after you became a detective about how to
11 investigate felony crimes?

12 A I can't put a number except that I don't recall
13 what number you had to have besides your police work.
14 Your tenure and the number of hours where you get -- you
15 went from basic, intermediate, advanced, and then you
16 made it all the way to -- to master. Whatever. Master
17 whatever --

18 Q All right.

19 A -- It was as a detective.

20 Q And you're talking about the state commission
21 that licenses and certifies police officers, correct?

22 A Correct. I believe so. Yes.

23 Q And -- and the -- and it's currently -- it's
24 currently the Texas Commission on Law Enforcement; is
25 that right?

1 A It's the law enforcement. I don't know if it's
2 the same one, sir, that you're talking about.

3 Q Okay. So the certifications you were just
4 talking about, the basic and the intermediate and the
5 master, those are certifications from the State of
6 Texas?

7 A I don't know. It's -- the academy told me I
8 had reached that category. I don't know where.

9 Q Very well. Now, let's talk about outside
10 training that you had outside the academy of the
11 department and you're in service work. What outside
12 training have you had in felony investigations?

13 A I've been to various homicide schools, child
14 abuse schools, [indiscernible] schools, and various
15 other seminars or schools that I would request to go.

16 Q All right. And -- and are those things that
17 you took the initiative to apply for?

18 A Yes, sir.

19 Q So let's get a little more -- a lit bit more
20 detail. Do you remember the names of any of those
21 programs?

22 A Just like the kinesic. The therapy school at
23 the FBI academy. [indiscernible] was with another --
24 another organization. In-house cleaning where we --
25 where they send us to the hotel and we had the seminars,

1 stuff like that, but I do not recall -- the only one
2 that I signed up for me is kinesic.

3 Q What is the name?

4 A Kinesic.

5 Q Kinesic. Okay. Very well. And where did you
6 take that? In El Paso or someone else?

7 A No, sir. I went out to Dallas I believe.

8 Q All right.

9 A And then I went to New York for another school.
10 That was by invitation only. I got the invitation. I
11 had to go outside of the department to get the monies to
12 go to that school because department said they couldn't
13 afford it.

14 Q All right. When you attend those courses like
15 that, are they teaching you about the legal requirements
16 for your profession?

17 A They're more -- they're more teaching you what
18 to look for in investigations and stuff like that, sir.

19 Q All right. And did they teach you any
20 compliance requirements to make sure that your
21 confession is admissible in evidence?

22 A Yes, sir.

23 Q So you talk about evidence law, correct?

24 A Yes.

25 Q At the time that you were investigating this

The Deposition of ALFONSO MARQUEZ, taken on May 10, 2022

1 case involving Daniel Villegas, what was your level of
2 competence about knowing the legal requirements? The
3 things that you were required to do?

4 MR. AINSWORTH: Objection. Foundation.

5 A I'd say they were real good.

6 Q And let me develop that just a little bit. Can
7 you estimate for the jury the number of hours of
8 instruction that you had taken at that point in time?

9 A I would say about maybe over 500, 700.

10 Q Okay. And you'd been a detective at the time
11 you went to that kinesic class for how many years?

12 A Seven.

13 Q Very well. And in 1993, you'd been a detective
14 for how long?

15 A Went to the detective division in '82 so four
16 or five years.

17 Q Very good. So when you were working up this
18 case, you -- who was your supervisor? I think you named
19 him earlier in the deposition.

20 A Dwayne Johnson.

21 Q Dwayne Johnson; is that correct?

22 A Yes, sir.

23 Q And how long had he been in the CAP unit?

24 A Sergeant. I don't know how long he had been in
25 there.

1 Q All right. The -- the work that you did, who
2 were the other people that you coordinated with or met
3 with as you worked on this file other than your sergeant
4 and the people that are named as parties in this case?

5 A That's all I can think of. Just the people
6 that are -- that are involved and the detectives. Once
7 in awhile, they're going to ask some -- another
8 detective, hey, can you come with me to find -- find --
9 find a partner or something like that, so they would
10 send -- whoever they would send out to do a -- to take
11 care of function. So I really don't know how many.

12 Q All right. Let's tell the -- tell the jury, if
13 you will, during the course of a business week in that
14 time period, did you have any regular meetings in the
15 Crimes Against Persons unit?

16 A Yes.

17 Q All right.

18 A Yes.

19 Q Describe those to the jury. What meetings did
20 you have, and what was their purpose?

21 A We had to show up to the -- the meeting. I
22 think it was the hours was 15 minutes before the hour,
23 8:00 o'clock, to discuss what happened the night before.
24 If there was any robberies, if there was any burglaries
25 or whatever, and how was the case going and stuff like

1 that. After everybody got, you know, five, three hours
2 going out, we were shown videos and maybe store
3 robberies armed robberies. Store's videos. And then we
4 would all read our assignments, and we would go work.

5 Q And in the course of those meetings, did you
6 discuss with those colleagues issues or problems that
7 you had?

8 A As -- as what, sir? With personal problems or?

9 Q Just working -- no. Not personal problems.
10 The work you were doing. The cases you were developing.

11 A We would discuss to what we needed to -- to do.

12 Q Okay. Did you talk about leads and who knew
13 people in the community?

14 A Yes, sir. That's correct.

15 Q All right. Now, what about interaction with
16 people from the prosecutor's office? Was that not a
17 normal part of your work?

18 A I -- the -- we basically stayed out of the --
19 out of the proses other than they would come to us after
20 we had -- they worked the case or finished the case, and
21 they would -- it was kind of like give us pros and cons
22 of a case. Instead of [indiscernible] care, we messed
23 it up over here and stuff like that. So they were --
24 they were basically giving us, I guess, lessons.

25 Q Okay. And those lessens, where did they take

1 place?

2 A In the -- in the office. In the prosecutor's
3 office. They would come to our office.

4 Q All right. So the prosecutors would come from
5 their office, and they would have those meetings to -- I
6 think you said that they were there to teach you
7 lessons, correct?

8 A Yeah. Either to let us know, hey, you guys did
9 good on this case, or if it was vice versa, you guys did
10 really bad on this case. That's why it was lost.
11 That's why we couldn't prosecute.

12 Q All right. And -- and how important was that
13 process to your learning how to do your job correct --
14 correctly?

15 A It was very important because we were -- they
16 were teaching as our telling us what were -- we were
17 efficient. [indiscernible] it out.

18 Q All right. And -- and did you in that context
19 also talk about the law of evidence?

20 A What, sir?

21 Q The law of evidence?

22 A Yes.

23 Q Did you talk about what it took to have a
24 lawful confession?

25 A Yes.

1 Q So at that point in your career -- and let me
2 just back up a minute. You -- you have denied from
3 counsels questions during this deposition that you ever
4 used any physical force against Daniel Villegas; is that
5 correct?

6 A Correct.

7 Q And did you know that using physical force
8 against him would have been a violation of the law?

9 A Yes.

10 Q Did you know it was a violation of -- of city
11 policy if you were to do something like that to get a
12 confession?

13 A Yes.

14 Q Were there any people in the CAP unit that
15 didn't know that basic rule?

16 A I don't --

17 MR. AINSWORTH: Objection. Foundation.

18 A I don't believe there was anybody in the CAP
19 that didn't know that that was a rule.

20 Q Did you ever hear anybody say anything in the
21 CAP unit that suggested to you or made you believe that
22 they didn't understand that rule?

23 A No, sir.

24 Q Now, what about the kind of coercion that comes
25 from telling somebody or threatening somebody that

1 they're going to be raped in jail or prison? Did you
2 know that that was a violation of the law to get a
3 confession by using that kind of coercion?

4 A Yes.

5 Q Was there any question that you had a duty or a
6 responsibility to maintain and preserve in your
7 investigative file exculpatory evidence?

8 A Yes.

9 Q You knew that that was your responsibility,
10 correct?

11 A Yes.

12 Q Among your colleagues when you would have these
13 meetings daily or weekly, were y'all reinforcing each
14 other to make sure that happened?

15 A No, sir. I don't -- I don't think so.

16 Q Okay. So what was it that made sure it
17 happened? Was it you by yourself or your supervisors?
18 What was the control if you will?

19 A Well, we all knew that shouldn't happen. That
20 we had to -- if any exculpatory evidence that would
21 come. So we all knew that. We never discussed, hey,
22 did you do it? Did you do it? Or did you do it?

23 Q Was Sergeant Dwayne Johnson giving you feedback
24 or oversight on that from time to time?

25 A I don't -- I don't recall, sir.

1 Q All right. So on these allegations that are
2 being made against you and some of your colleagues, did
3 you know that the policies of the department prohibited
4 that kind of conduct?

5 A Yes.

6 Q Did you believe for any reason that if you were
7 found actually guilty or responsible for that conduct,
8 that you would be held accountable?

9 A Yes.

10 Q Now, what things did you see happen in the El
11 Paso Police Department that showed you that that was
12 truly the department's commitment?

13 A I haven't seen but I -- I've heard that the
14 people that got fired for various things and then I knew
15 they were wrong.

16 Q When you had your internal affairs cases that
17 you talked about, did you take them seriously?

18 A Yes, sir.

19 Q And even though you weren't afraid, as you've
20 testified to counsel because you believed that you
21 didn't do anything wrong, were you worried about your
22 career?

23 A Yes.

24 MR. AINSWORTH: Object to the form of the
25 question.

1 Q So when you were involved in that perjury case
2 brought by Lawyer Gibson, tell the jury about the
3 testimony that you gave other than the testimony at
4 internal affairs. Where else did you testify?

5 A The only place that I remember testifying was
6 at the suppression hearing. The suppression hearing
7 here, and I believe the judge was Judge Paxton. He
8 moved the trial to -- he said, no. Everything goes to
9 New Mexico. And then I never had a chance to testify in
10 New Mexico.

11 Q Now, tell the jury -- I don't know at this
12 point in our trial whether or not the jury will have
13 heard all about a motion to suppress, but just tell the
14 jury what you mean by a motion to suppress. What is
15 that and how does it work?

16 A A motion to suppress, the attorney takes the
17 motions up before the judge alleging certain misconduct
18 in the acts in order to obtain that confession, and they
19 wanted to suppress not to be used as evidence.

20 Q And so Mr. Gibson filed a motion to suppress to
21 try to keep the confession of Debra Wakes from coming
22 into evidence in that case, correct?

23 A That's correct.

24 MR. AINSWORTH: Objection to leading.

25 (Simultaneous speakers)

1 MR. DENTON: What was the objection?

2 MR. AINSWORTH: Object to the leading.

3 Q So what did Mr. Gibson do in that case for his
4 client, Debra Wakes?

5 A Are you talking after the trial?

6 Q No. No. I've just reasked the question for
7 the form objection on leading. So I'm asking you the
8 open question. What did Mr. Gibson do in his motion to
9 suppress?

10 A The motion to suppress? He argued. I mean, I
11 don't know what -- how to answer that question, what did
12 he do.

13 Q Very good. And were you called to testify as a
14 witness?

15 A On -- on the motion to suppress? Yes.

16 Q All right. And did you -- did you -- did your
17 colleague, Officer -- Detective Flynn, did he also
18 testify?

19 A I don't believe so. I don't know.

20 Q Okay. You don't know?

21 A No, sir. I don't know.

22 Q And so do you know what the lawyers mean when
23 they say invoking the rule?

24 A Yes.

25 Q And tell the jury what that means to invoke the

1 rule.

2 A That means that I cannot hear somebody's
3 testimony if I am going to testify myself.

4 Q Okay. And that's why you don't know what his
5 testimony was?

6 A Correct.

7 Q Now, you just told the jury a little bit about
8 a motion to suppress. How common is that in the work
9 that you do? Does that happen almost never or
10 frequently?

11 MR. AINSWORTH: Objection. Foundation.

12 A That happens almost on every case.

13 Q All right. And let me ask a little bit about
14 your background there. You've been a detective in El
15 Paso for -- you were a detective for decades, right?

16 A Eleven years, sir.

17 Q And so for the time that you were there, did
18 you testify in many motions to suppress?

19 A Yes.

20 Q And were you frequently at the courthouse?

21 A Yes.

22 Q Were you frequently talking to prosecutors
23 about motions to suppress in that courthouse?

24 A Yes.

25 Q When you went and testified in those

1 proceedings, were you learning more all the time about
2 the law of evidence?

3 A Everyday. Every time.

4 Q Did you meet with the prosecutors before those
5 hearings took place to prepare for your testimony?

6 A Yes.

7 Q Did any of those prosecutors ever tell you that
8 they thought you were lying or that you had coerced a
9 confession?

10 A No.

11 Q Do you remember any case other than Ms. Wakes
12 case where somebody accused you of physical abuse of a
13 subject?

14 A No.

15 Q Do you remember any case where you were accused
16 in a hearing in front of a -- a district judge of
17 threatening somebody with being raped in jail or prison?

18 A Can you rephrase that question? Because I
19 don't know if you're asking me if an attorney had made
20 comments like that or was I --

21 Q Yes. Yes.

22 A Attorneys, yes.

23 Q Yes. And do you ever remember a judge ruling
24 in favor of that claim and against your testimony?

25 A No.

1 Q Other than the -- the matter about Debra Wakes
2 that we talked about, do you have any specific
3 recollection of other confessions or witness statements
4 that were suppressed in a case where you were the case
5 agent?

6 A No.

7 Q What is your personal belief about an officer's
8 duty to know and follow the law?

9 A That it should be known and followed.

10 Q Outside of the department, did you work with
11 other law enforcement agencies doing similar work to
12 your own?

13 A On my own? No, sir. But within the
14 department, the sheriffs department New Mexico, Ontario,
15 yes. And --

16 Q So were you able -- were you able to learn
17 about and understand the way they did the tasks that you
18 were doing at the El Paso Police Department?

19 A Yes, sir.

20 Q And were you -- did you become familiar with
21 their reports and the way they kept their files?

22 A No, sir. Not really.

23 Q Did you ever get reports from those other
24 agencies and use those in your investigation?

25 A Just when they helped out with the

1 investigations. Yes.

2 Q Okay. So were you able to compare notes with
3 colleagues in those other agencies to see how you were
4 doing things?

5 A No, sir. I don't think so.

6 Q All right. You just didn't get enough of a
7 window into how they were doing things?

8 A That's correct.

9 Q In the courses that you took outside of the
10 police department, were any of those taught by people
11 from those other agencies?

12 A There was -- it was that the instructors -- I
13 don't know what agencies they -- they were, but the
14 detectives that were -- that were there, they've got --
15 they would share their information with us about how
16 they did things and sometimes they would bring something
17 back from there and use it here.

18 Q Okay. A lesson or somehow -- some way to
19 improve your operation?

20 A Correct.

21 Q And that would be when you went to a seminar
22 and people were there for multiple other agencies?

23 A Yes, sir.

24 Q And that included federal agencies?

25 A Yes, sir.

1 Q The sheriffs office?

2 A Sheriffs office. Yes.

3 Q Texas Rangers?

4 A No. I never worked with Texas Rangers.

5 Q All right. Department of Public Safety?

6 A I can't say I worked with DPS.

7 Q All right. And I think you earlier alluded to
8 an FBI school. Did you attend an FBI school?

9 A Yes, sir.

10 Q How did that compare to your other
11 instructions? Was it better, worse, the same?

12 A It -- it was referenced newsletters,
13 fingerprint taking, and stuff like that. And it was --
14 it was just to learn those things, and the next time I
15 went, it was for SWAT training.

16 Q So let me ask you now about information. You
17 were asked some questions about your supervisors and
18 whether or not they got in the way of your doing your
19 job the way you wanted to do it. Do you remember that?

20 A Yes, sir.

21 Q Did your supervisor ever say or do anything
22 that told you you didn't have to follow the department
23 policy?

24 A No, sir.

25 Q Did you ever see any conduct by any supervisors

1 in the CAP unit that suggested to you that those rules
2 really didn't apply?

3 A No, sir.

4 Q Are you aware of any information about coercive
5 investigative conduct that Chief Skagnow had or knew
6 about in 1993 or '94?

7 A No, sir. I don't.

8 Q Have you heard from anybody else that
9 information about misbehavior by investigators was
10 passed on it the Chief's office and nothing was done
11 about it?

12 A No, sir. Not that I've heard of.

13 Q Were you ever in a meeting or in a room where
14 there were discussions with the Chief about misconduct
15 and nothing happened?

16 A No, sir.

17 Q And did you know Chief Skagnow in those years?

18 A Yes, sir. I did.

19 Q Did you ever run into him or see him socially
20 or professionally?

21 A I would run into him, and we spoke very nicely
22 together but I've never socialized with him.

23 Q Do you remember you said earlier that you heard
24 about people getting fired for misconduct in the past.
25 Do you know of any incident where somebody was fired or

1 seriously disciplined for any kind of coercive conduct
2 in an investigation?

3 A No, sir. I don't.

4 Q Do you recall ever knowing about or being
5 involved in an investigation by an outside agency of
6 misconduct in the El Paso Police Department?

7 A No, sir. A outside agency? No, sir.

8 Q All right. No -- no investigation by the Texas
9 Rangers on an allegation of officer misconduct?

10 A That I know of, sir, no.

11 Q All right. No investigation from the FBI of
12 that -- of that nature?

13 A No, sir.

14 Q So going back to the motion to suppress
15 process. One of the allegations in this complaint
16 against you and your colleagues involves an individual
17 named Steven Alvarado. Do you remember that name?

18 A No, sir. I don't.

19 Q All right. And you may or may not remember
20 about this. I don't have a specific date here but this
21 was a 17-year-old named Steven Alvarado, and there was a
22 motion to suppress in that case alleging that multiple
23 officers, including yourself, verbally abused Alvarado,
24 struck him in the face, refused his repeated request to
25 see a lawyer. Do you remember a motion to suppress on

1 that case?

2 A No, sir. I don't.

3 Q All right. When the motions to suppress would
4 take place and the court would rule on it, would you
5 find out about it?

6 A Generally. But I can't say not at all times.

7 Q Okay. And what about when those cases went up
8 on appeal? Did you ever find out about what the
9 appellant results in those cases were?

10 A No, sir. We weren't. Well, we found out about
11 it by word of mouth but nothing coming down in the
12 paper.

13 Q Okay. So nothing official, right?

14 A Correct.

15 Q And the meeting that you were having with
16 the -- how often did the meetings take place with the
17 prosecutors? The assistant district attorneys?

18 A It was every time that we had a major case
19 whether -- then they got to do this or saying -- however
20 the cases were, they would come and let us know how we
21 did, and how -- how bad we did or how good we did.

22 Q All right. So -- so on ad hoc, as needed
23 basis, correct?

24 A Yes, sir.

25 Q And would you get a -- a feedback in any of

1 those cases that had gone up on appeal?

2 A No, sir. I don't believe so.

3 MR. DENTON: All right. Thank you, sir, for
4 your answers to my questions. I'll pass the witness.

5 MR. MARTINEZ: I assume we're at seven hours or
6 more? Yes?

7 THE REPORTER: Yes.

8 MR. MARTINEZ: Okay.

9 THE REPORTER: 7:27.

10 MR. MARTINEZ: Oh, good grief. We're done.

11 MR. AINSWORTH: Whose counting? Does anyone
12 have any questions?

13 MR. MARTINEZ: Good.

14 MR. BRITTAIN: No questions from Eric Brittain
15 on behalf of Officer Bellows.

16 MR. ALMANZAN: And this is Andy Almanzan. No
17 questions for this witness until the time of trial on
18 behalf of Carlos Ortega.

19 MR. JIM DARNELL: This is Jim Darnell. No
20 questions at this time.

21 MR. MARTINEZ: Ashley, we are done.

22 THE VIDEOGRAPHER: All right. We are off the
23 record. The time is 7:07 p.m.

24 (Deposition concluded at 7:07 p.m.)

25

CHANGES AND SIGNATURE

WITNESS NAME: ALFONSO MARQUEZ

DATE OF DEPOSITION: MAY 10, 2022

PAGE	LINE	CHANGE	REASON
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1 I, ALFONSO MARQUEZ, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

4
 5 _____
 6 ALFONSO MARQUEZ

7 THE STATE OF _____)

8 COUNTY OF _____)

9 Before me, _____, on this day
 10 personally appeared ALFONSO MARQUEZ, known to me (or
 11 proved to me under oath or through _____)
 12 (description of identity card or other document) to be
 13 the person whose name is subscribed to the foregoing
 14 instrument and acknowledged to me that he executed the
 15 same for the purposes and consideration therein
 16 expressed.

17 Given under my hand and seal of office this
 18 _____ day of _____, _____.

19 _____
 20 NOTARY PUBLIC IN AND FOR
 21 THE STATE OF _____
 22
 23
 24
 25

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS, EL PASO DIVISION

DANIEL VILLEGAS,)	
)	
Plaintiff	)	Case No. 3:15-CV-386
)	
VS.	)	Hon. David C. Guaderrama,
	)	District Judge
)	
CITY OF EL PASO,)	
ET AL.,	)	Hon. Leon Schydlower,
	)	Magistrate Judge
)	
Defendants	)	JURY TRIAL DEMANDED

REPORTER'S CERTIFICATE

DEPOSITION OF ALFONSO MARQUEZ

MAY 10, 2022

I, Ashley Elizondo, Certified Court Reporter,
in and for the State of Texas, hereby certify to the
following:

That the witness, ALFONSO MARQUEZ, was duly
sworn by the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted
on _____, to the witness or to the attorney
for the witness for examination, signature, and returned
to me by _____;

1 That the amount of time used by each party at
2 the deposition is as follows:

3 MR. RUSSELL AINSWORTH-7 HOURS AND 2 MINUTES

4 MR. LOWELL DENTON- 30 MINUTES

5 That pursuant to information given to the
6 deposition officer at the time said testimony was taken,
7 the following includes counsel for all parties of
8 record:

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26 I further certify that I am neither counsel
27 for, related to, nor employed by any of the parties or
28 attorneys in the action in which this proceeding was
29 taken, and further that I am not financially or
30 otherwise interested in the outcome of the action.

1 Further certification requirements will be
2 certified to after they have occurred.

3 Certified to by me this 25th day of
4 May, 2022.

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Ashley Elizondo, Texas CSR No. 9465
Expiration Date: 2/28/2024

FURTHER CERTIFICATION

The original deposition was/was not returned
to the deposition officer on

_____;

If returned, the attached Changes and
Signature page contains any changes and the reasons
therefor;

If returned, the original deposition was

1 delivered to _____, ALFONSO MARQUEZ;

2 That \$_____ is the deposition
3 officer's charges to the PLAINTIFF for preparing the
4 original deposition transcript and any copies of
5 exhibits;

6 That a copy of this certificate was served on
7 all parties shown herein.

8 Certified to by me this _____ day of
9 _____, 2022.

10
11
12
13
14 Ashley Elizondo, Texas CSR No. 9465
15 Expiration Date: 2/28/2024
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ATTACHMENT 2-B



KENTUCKIANA
— COURT REPORTERS —

NO. 3:15-CV-386

DANIEL VILLEGAS

VS

CITY OF EL PASO, ET AL.

DEPONENT:

EARL ARBOGAST

DATE:

June 30, 2022



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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

DANIEL VILLEGAS,)
)
Plaintiff,)
v) No. 3:15-CV-386
)
CITY OF EL PASO, et al.,)
)
Defendants.)

ZOOM VIDEO DEPOSITION OF

EARL ARBOGAST

JUNE 30, 2022

ZOOM VIDEO DEPOSITION of EARL ARBOGAST,
produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on JUNE 30, 2022, from 9:12 a.m. to 5:19
p.m., via Zoom, pursuant to the Federal Rules of Civil
Procedure.

Reported by:

Ginger G. Zachary, CSR, RPR, CRR

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1 THE VIDEO TECHNICIAN: On record. My name
2 is Sydney Little. I'm the online video technician, and
3 Ginger Zachary is the court reporter today, representing
4 Kentuckiana Court Reporters, located at 730 West Main
5 Street, Suite 101, Louisville, Kentucky 40202.

6 Today is the 30th day of June 2022. The
7 time is 9:12 a.m. We are convened by videoconference to
8 take the deposition of Earl Arbogast in the matter of
9 Daniel Villegas versus City of El Pas- -- El Paso,
10 et al., pending in the United States District Court for
11 the Western Division [sic] of Texas, El Paso Division,
12 case number 3:15-CV-386.

13 Will everyone but the witness please state
14 your appearance, how you're attending, and the location
15 you are attending from, starting with Plaintiff's
16 counsel?

17 MR. HILKE: Wallace Hilke for Plaintiff
18 Daniel Villegas, attending by Zoom from Chicago,
19 Illinois.

20 MR. TSCHIRHART: Scott Tschirhart atten- --
21 representing the City of -- Scott Tschirhart
22 representing the City of El Paso, attending from
23 San Antonio, Texas.

24 MR. ALMANZAN: And this is Andy Almanzan
25 appearing for Defendant Carlos Ortega, appearing from

1 El Paso, Texas.

2 MR. MARTINEZ: Jim Martinez for Alfonso
3 Marquez at my office in El Paso.

4 MR. JIM DARNELL: Jim Darnell for Earl
5 Arbogast, and I'm appearing from El Paso.

6 MR. BRITTAIN: Eric Brittain on behalf of
7 Defendant Kimmett Bellows, from my office in El Paso,
8 Texas, via Zoom.

9 THE VIDEO TECHNICIAN: Thank you.

10 Mr. Arbogast, will you please state your
11 name for the record and hold your ID up to the camera?

12 THE WITNESS: Okay. It's Earl Arbogast.
13 And this is my driver's license.

14 THE VIDEO TECHNICIAN: Great. Thank you.
15 Do all parties agree that the witness is,
16 in fact, Earl Arbogast?

17 You can put that down. Thank you.

18 MR. HILKE: Yes.

19 THE VIDEO TECHNICIAN: Thank you.

20 All right. And, Ginger?

21 THE REPORTER: My name is Ginger Zachary,
22 Texas CSR 5710. I am reporting the deposition remotely
23 by stenographic means from Chaparral, New Mexico. The
24 witness is located in El Paso, Texas. The Texas Online
25 Notary Public is Elissa E. Chew, Commission Number

1 126254355, located in El Paso, Texas, who will now
2 administer the oath.

3 (Witness duly sworn.)

4 MS. CHEW: You may proceed, Counsel.

5 EARL ARBOGAST,
6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. HILKE:

9 **Q. Good morning, sir.**

10 **A. Good morning, sir.**

11 MR. TSCHIRHART: Wally, can we have a
12 stipulation on the record that an objection from one
13 defendant is good for all?

14 MR. HILKE: Yes, we'll so stipulate.

15 MR. TSCHIRHART: Okay. Thank you.

16 **Q. (BY MR. HILKE) Sir, my name's Wallace Hilke,**
17 **and I am one of the lawyers for Plaintiff Daniel**
18 **Villegas, and I'm going to be asking you a few questions**
19 **today.**

20 **A. Okay.**

21 **Q. I'm going to start with an easy one. Could you**
22 **please state and spell your name for the record?**

23 **A. Yeah. It's Earl Arbogast. Earl is E-A-R-L.**
24 **Arbogast is A-R-B-, as in "boy," -O-G-, as in "George,"**
25 **-A-S-T.**

1 Q. And, sir, have you -- have you ever given a
2 deposition before?

3 A. No.

4 Q. Okay. So I'm going to go over a few rules for
5 today. Just like in court, there is a court reporter
6 taking down everything you and I say during this
7 deposition, and so just like in court, it's important to
8 speak loudly and to give "yes" and "no" answers instead
9 of gestures or things like that. Does that make sense?

10 A. Yes.

11 Q. And just like in court, also, it's important
12 that we talk one at a time so she can take down
13 everything we say. Does that make sense?

14 A. Yes.

15 Q. And I'm going to try to only ask questions that
16 make sense to you, but if my questions don't make sense,
17 will you please stop me and let me know you need me to
18 clarify them?

19 A. Okay.

20 Q. And likewise, if you answer a question I ask,
21 I'll assume that you understood the question. Is that
22 fair?

23 A. Yes.

24 Q. And we can take breaks whenever you would like.
25 The only thing I will ask is that you answer a pending

1 question from me before we go on break. Does that --

2 A. Okay.

3 Q. -- make sense?

4 A. (Moves head up and down.)

5 Q. And then let me ask: Do you have any health
6 conditions that affect your memory in any way?

7 A. No. Not right now, no.

8 Q. Okay. And are you currently taking any
9 medications that affect your memory in any way?

10 A. No.

11 Q. And do you have any health conditions, or are
12 you taking any medications that would prevent you from
13 testifying truthfully today?

14 A. No.

15 Q. Can you think of any rea- -- anything that
16 would prevent you from testifying truthfully today?

17 A. No.

18 Q. Great. So to...

19 Did you review any documents to prepare for
20 today's deposition?

21 A. Yes, I reviewed some.

22 Q. And without telling me anything you said to
23 your lawyer or anything your lawyer said to you, what
24 documents did you review in preparation for today?

25 A. Some of the court -- courtroom testimony where

1 I testified in.

2 Q. And did that include your testimony from a 2014
3 habeas proceeding?

4 A. I don't -- I don't know what it was from, but
5 it was -- it wasn't from the trial. It was the --
6 the -- the latter two.

7 Q. Got it.

8 Were the -- and so you -- there were two
9 transcripts of trial testimony that you looked at?

10 A. I looked at some of that testimony, yeah, some
11 of the detectives at -- at the trial.

12 Q. Okay. So you looked at your own testimony.
13 Some of the testimony you looked at was your own
14 testimony; is that correct?

15 A. Yes.

16 Q. And how many transcripts of your own testimony
17 did you look at?

18 A. I think there were two separate ones.

19 Q. Okay. And were they both pretty long, say,
20 around a hundred pages or so?

21 A. No.

22 Q. No?

23 How long were they?

24 A. One was, I think, about 12 pages, and the other
25 one was about -- the -- the first one, maybe 20, 25

1 pages, yeah.

2 **Q. Okay. And what other detectives' testimony did**
3 **you look at?**

4 A. I looked at Detective Marquez, and that was the
5 only other detective, I believe. And Charlie Ortega. I
6 remember his.

7 **Q. And was that their testimony at criminal trials**
8 **of Daniel Villegas?**

9 A. You know, I didn't notice. I -- I just saw the
10 statements and I -- I think what they were, they were
11 statements they made in the case and some of the
12 courtroom testimony.

13 **Q. Okay. And other than courtroom testimony, did**
14 **you look at any other documents?**

15 A. Courtroom testimony, statements that were in
16 the case.

17 **Q. Uh-huh. And were some of those statements from**
18 **suspects in the investigation?**

19 A. I saw Daniel Villegas' statement in there. I
20 didn't read it. I've never read his statement.

21 **Q. Okay. And were some of the statements from**
22 **witnesses?**

23 A. Yes. I read a statement from two witnesses
24 that I took statements from.

25 **Q. And what witnesses were those?**

1 A. Tony Vincent and Juan Medina, I believe.

2 Q. Okay. And did you review any other statements
3 from witnesses?

4 A. I didn't read -- no. I didn't read any of the
5 statements.

6 Q. Did you --

7 A. Really, I -- I could say I might have. I don't
8 remember reading any others. I remember I was
9 concentrating on the statements that I took.

10 Q. Okay. Did you read your supplemental report
11 from the murder investigation?

12 A. No. I couldn't find it.

13 Q. Did you read the reports of any other
14 detectives?

15 A. Detective Marquez and Detective Ortega.

16 Q. Okay. And did you read any other witness
17 statements?

18 A. Just the ones I remember were the ones that I
19 took.

20 Q. Okay. Do you recall reviewing any other
21 documents in preparation for today?

22 A. No. Courtroom testimony and then some
23 documents in -- that were in with the case.

24 Q. Did you review any -- any video files?

25 A. No.

1 Q. Or any audio files?

2 A. No.

3 Q. Did you review any personal notes?

4 A. No. I didn't do any, no.

5 Q. Okay. And as a police officer with the El Paso
6 Police Department, did you keep any personal files about
7 your investigations?

8 A. No.

9 Q. Okay. Did you keep any copies of police
10 reports?

11 A. No.

12 Q. Okay. So, again, without telling me anything
13 about what you discussed with your attorney, how many
14 times did you meet with your attorney to prepare for
15 this deposition?

16 A. I met -- for -- for this one today, I met him
17 once when he had prepared the documents for me to
18 review, but I really didn't talk to him. He just had
19 them there at the law office. And then I talked to him
20 yesterday for about a half hour.

21 Q. Okay. So when you were here yesterday, again,
22 without telling me anything you discussed, who was
23 present for your meeting?

24 A. Just myself and Jim Darnell.

25 Q. Okay. And other than those two meetings, did

1 you have any phone conversations with your lawyers to
2 prepare for this deposition?

3 A. No.

4 Q. Okay. And was there anything you wanted to
5 look at to prepare for this deposition, but were not
6 able to?

7 A. I guess I haven't seen my -- my supplemental
8 report.

9 Q. Okay. Anything else?

10 A. Not that I can think of.

11 Q. Did you have adequate time to prepare for
12 today's deposition?

13 A. Yes.

14 Q. And do you feel prepared to testify today?

15 A. I do.

16 Q. Sir, how old are you today?

17 A. 68.

18 Q. And you graduated from high school; is that
19 correct?

20 A. Yes.

21 Q. And was that in El Paso?

22 A. Yes.

23 Q. And you proceeded to serve in the military; is
24 that right?

25 A. Yes.

1 Q. How many years did you serve in the military?

2 A. Three years.

3 Q. And at what branch did you serve in?

4 A. It was the Army.

5 Q. And did you ever serve as a military police
6 while you were in the Army?

7 A. No.

8 Q. And after -- after you left the Army, did
9 you -- did you later become a law enforcement officer?

10 A. Yes.

11 Q. What was your first job in law enforcement?

12 A. It was as a -- well, it was through the
13 academy, and after I graduated from the academy, I was
14 in patrol.

15 Q. Was that the academy in El Paso?

16 A. Yes.

17 Q. What year did you enter the academy?

18 A. July of 1977.

19 Q. How long was the academy?

20 A. I believe it was four months back then.

21 Q. And what kinds of -- what kinds of training did
22 you receive at the academy?

23 A. Just academics and -- and physical. We went
24 through the Penal Code, Code of Criminal Procedures, and
25 then different techniques on how to protect yourself,

1 how to handcuff.

2 Q. Okay. As part of that training, did you learn
3 about constitutional rights that you're required to
4 follow as a law enforcement officer?

5 A. Yes.

6 Q. And would that include Miranda rights of
7 suspects?

8 A. I -- I don't remember exactly what we were
9 taught from the Code of Criminal Procedure back then,
10 but I know that we did hit it, and I can't remember
11 specifically what -- what subjects --

12 Q. Okay.

13 A. -- I had back then. It's been quite a while.

14 Q. Sure.

15 But coming out of the academy, you knew
16 that you couldn't arrest and question a criminal suspect
17 without advising them of their rights; is that fair?

18 A. Yes. If you were going to inter- --
19 interrogate or interview anybody, then you would have to
20 Mirandize them. I could arrest somebody and take them
21 to the station.

22 Q. Right.

23 Did -- and so after the academy, what was
24 your first assignment with the El Paso Police
25 Department?

1 A. It was patrol.

2 Q. Patrol?

3 And did you have a geographical assignment
4 as a patrol officer?

5 A. Well, can you repeat it?

6 Q. Yeah.

7 Did you have a geographical assignment as a
8 patrol officer?

9 A. Yes.

10 Q. What was your assignment?

11 A. It was a district within the northeast part of
12 town.

13 Q. Approximately what were the -- what were the
14 bounds of that district?

15 A. Well, in El Paso, it ran from Atlas and Gateway
16 to about Hondo Pass and -- and Dyer Street, all the way
17 up to the mountain and to Railroad.

18 Q. Okay. How many -- how many patrol -- patrol
19 districts were -- were there in the El Paso Police
20 Department at that time?

21 A. Well, it was different at different times I was
22 there. They kept increasing it. But when I first
23 started, there were four.

24 Q. Okay. And did you work in a marked car?

25 A. Yes.

1 Q. Did you work in uniform?

2 A. Yes.

3 Q. Okay. How long did you remain in the northeast
4 patrol district?

5 A. Approximately nine years, I guess.

6 Q. Okay. So am I correct that that would take you
7 to about 1986?

8 A. Yeah. Eight or nine year- -- yeah, about 1986.

9 Q. What was your next assignment?

10 A. I -- I worked in the crimes against persons
11 section for a little while.

12 Q. And did you -- did you promote to detective at
13 that time?

14 A. Yes.

15 Q. What was the process for promoting to
16 detective?

17 A. It was a written exam, and they rated you based
18 on how high you scored.

19 Q. And do you remember where you ranked in your
20 exam for detective?

21 A. Yeah. I was number one.

22 Q. And what -- what subjects were included in the
23 detectives ex- -- in the detectives exam?

24 A. The Penal Code, Code of Criminal Procedure, and
25 then also textbooks on investigation or -- two or three

1 textbooks.

2 Q. Did you also -- were you also tested on the
3 El Paso Police Department's policies?

4 A. Oh, I -- I didn't get that again.

5 Q. Oh, yeah.

6 Were the El Paso Police Department's
7 policies also part of the detectives exam?

8 A. Yes, it would have been.

9 Q. So to score number one, you would have needed
10 to know El Paso's policies pretty well when you promoted
11 to detective; is that fair?

12 A. Well, I don't remember how many questions from
13 that section were on there, but you would have to know
14 it.

15 Q. Okay. And you would have -- you would have to
16 know all the subjects on the exam pretty well to test
17 number one; is that fair?

18 A. Well, you try to -- yeah. You -- you can't
19 remember everything, so you try to prioritize what you
20 thought was important.

21 Q. Sure. And what -- what did you think was
22 important studying for that exam?

23 A. I think the two most important things were the
24 Penal Code and Code of Criminal Procedure because that's
25 what you deal with mostly.

1 Q. So when you -- when you started at crimes
2 against persons, what were your responsibilities?

3 A. I was in robbery.

4 Q. Okay. Did you handle exclusively robbery
5 investigations?

6 A. Yes.

7 Q. And what were your responsibilities in
8 investigating robberies?

9 A. There was just cases assigned to where I had to
10 investigate.

11 Q. So you had to go out and conduct interviews; is
12 that correct?

13 A. Yes.

14 Q. And you also had to interrogate suspects?

15 A. Yeah. At times, yeah.

16 Q. And you had to gather evidence relevant to the
17 cases?

18 A. Can you repeat that?

19 Q. You had to gather evidence relevant to the
20 cases?

21 A. Yes.

22 Q. And you had to prepare the police file so that
23 the district attorney could make a charging decision?

24 A. Yes.

25 Q. You had to work with other detectives in your

1 investigations?

2 A. Yes.

3 Q. You had to work with other divisions, like
4 patrol, in your investigations?

5 A. I had to work with them?

6 Q. Yes, sir.

7 A. Yeah. You consulted with patrol when you work.

8 Q. Can you -- can you think of any other major
9 parts of investigating robberies that I haven't
10 mentioned?

11 A. Can you repeat that?

12 Q. Yeah.

13 Were there -- were there any other major
14 parts of investigating robberies?

15 A. Well, just the investigation part. I mean,
16 we -- we did a lot of things that encompassed that. We
17 used to install bait money for the convenience stores,
18 and we just had different duties.

19 Q. And so you would also conduct proactive
20 investigations to try to catch robbers; is that right?

21 A. Yes.

22 Q. Okay. How long did you remain in the robbery
23 section at crimes against persons?

24 A. It wasn't very long. It was -- it was probably
25 less than six months.

1 Q. Okay.

2 A. And then I --

3 Q. Where did you go?

4 A. And then I transferred out.

5 Q. Okay. Where did you transfer to?

6 A. To white-collar crime.

7 Q. Did you seek that transfer?

8 A. What was that?

9 Q. Did you seek that transfer?

10 A. No, I didn't. What happened was that when I
11 made detective, crimes against persons was pretty busy.
12 So even though they didn't have an opening, I went
13 there. And -- and after a while, since they were
14 working one over, they -- they moved me to where there
15 was an opening, and it happened to be white collar.

16 Q. I see.

17 How long did you remain in white collar?

18 A. I think it was about a year.

19 Q. Where did you go next?

20 A. I went back to crimes against persons.

21 Q. Was white collar separate from crimes against
22 persons?

23 A. Yes, it was.

24 Q. Okay. And when you went back to crimes against
25 persons, were you assigned to any particular division?

1 A. Yes. At that time, I think we were still
2 separated, so I started out in robbery.

3 Q. And how long did you remain in robbery the
4 second time around?

5 A. I don't remember exactly when it was, but it --
6 the unit changed at some point -- I don't remember
7 exactly when -- where you were investigating everything.

8 Q. Were you in robberies more than a year
9 before -- before that change happened?

10 A. When did it happen? It -- I -- I really don't
11 remember when it -- when it changed.

12 Q. Okay. Certainly, by April 1993 when the
13 England/Lazo murders happened, you were investigating
14 homicides at that time; is that fair?

15 A. Yes.

16 Q. So the change happened sometime before April
17 1993; is that right?

18 A. Yes.

19 Q. Do -- okay. So between -- between when you
20 came back from white collar and April 1993, were you in
21 crimes against persons that whole time?

22 A. Yes.

23 Q. So you had been in crimes against persons for
24 several years by the time the England/Lazo murders took
25 place; is that right?

1 A. Yes.

2 Q. Okay. Did you receive any training after
3 becoming a detective?

4 A. Any training?

5 Q. Yes, sir.

6 A. Yes. I went to some schools.

7 Q. And did El Paso require you to take any
8 training as -- as soon as you became a detective?

9 A. No.

10 Q. Did you ever seek other promotions beyond
11 detective?

12 A. No, I didn't.

13 Q. Did you work with any -- did you work with any
14 partners while you were in crimes against persons?

15 A. Yes. I had a few. I -- I had -- do you want
16 to know who they were or -- but I had a few partners.

17 Q. Yes. Who -- who were your partners? And if
18 you remember, when were you partnered with them?

19 A. I worked mostly, when I first got there the
20 first few times, with Detective Wiles.

21 Q. Okay.

22 A. And then I worked with Al Marquez for a short
23 time when I first went to homicide -- or crimes against
24 persons. And then I worked with Johnny Guerrero for a
25 number of years. And after that, the unit changed, and

1 we would get called out to -- to a murder scene, and
2 they would just assign somebody with you.

3 **Q. So, eventually, it changed so it was kind of a**
4 **case-by-case decision who would be working on the case;**
5 **is that right?**

6 A. Pretty much. There were guys that liked to
7 work with each other, and they tried to -- to honor
8 that, but, pretty much, you -- you could be stuck with
9 anybody.

10 **Q. Did -- how were you first partnered up with Al**
11 **Marquez?**

12 A. There was a murder in the northeast part of
13 town.

14 **Q. When was that?**

15 A. When I first made detective, and I spent white
16 collar, so it would have had to have been about 1988.
17 I'm just estimating.

18 **Q. Yeah?**

19 **What -- what were the circumstances of the**
20 **murder?**

21 A. It was a break-in to a house with an elderly
22 gentleman who was killed during the commission of a
23 burglary.

24 **Q. Okay. And what did you and Al Marquez do to**
25 **investigate the case?**

1 A. We -- we had -- we -- we had called out
2 criminalistics to see -- to get any evidence, autopsy.
3 We tried to reach out to, you know, any witnesses that
4 were in the area. There was barely -- well, a project
5 area that was nearby, trying to find witnesses.

6 **Q. And when you say "a project area," do you mean**
7 **like public housing?**

8 A. Yes.

9 **Q. Okay. And did you -- did you interview**
10 **witnesses in the investigation?**

11 A. Yes. I -- I don't remember specific interviews
12 that we did, but I don't think I ever worked a case
13 where we didn't interview a witness.

14 **Q. Yeah.**

15 **And did you go with Al Marquez to interview**
16 **witnesses together?**

17 A. Yeah, I'm sure we did.

18 **Q. Okay. Did you identify any suspects?**

19 A. No. I got moved off that murder.

20 **Q. Okay. If you know, how did the investigation**
21 **conclude?**

22 A. Yes.

23 **Q. Or I'm sorry. Did it conclude -- was it closed**
24 **with a suspect being identified?**

25 A. Yes.

1 Q. Okay. And was a confession taken from that
2 suspect?

3 A. Yes.

4 Q. Did Al Marquez take that confession?

5 A. No. He wasn't on the case, either, anymore. I
6 was paired with another detective, Johnny Guerrero, and
7 then we continued working that case. I was just working
8 with another detective.

9 Q. So you continued the case, but Al Marquez
10 didn't?

11 A. Correct.

12 Q. Okay. And were you paired with Al Marquez in
13 other investigations?

14 A. Here and there. He wasn't a regular partner of
15 mine.

16 Q. Okay. Did you work other homicides with Al
17 Marquez?

18 A. Yeah. There was scene -- times we got called
19 to the same scene. I mean, sometimes, you know, six,
20 seven, eight detectives would be called to the scene.
21 You'd all be working together.

22 Q. How long -- how long did you remain in crimes
23 against persons the second time you were there?

24 A. I think I left in about 19- -- and I'm
25 estimating here -- about 1994 or so.

1 Q. So not very long after the -- the Lazo/England
2 murders; is that right?

3 A. Yes. Let me -- let me think here. I'm trying
4 to think of -- I went -- I was -- if you can give me a
5 moment.

6 Q. Sure.

7 A. Let's see. Yeah. Okay. No. I -- I think
8 that's right.

9 Q. What was your next assignment?

10 A. I worked crimes against children, where we
11 investigated sexual abuse of -- physical and sexual
12 abuse of children.

13 Q. How long were you there?

14 A. I was there until the end of my career.

15 Q. Did you ever recur -- return to crimes against
16 persons after 1994?

17 A. No, I don't believe so. I know I was there
18 three times. I don't know if that's three times. It...

19 Q. Why did you decide to leave crimes against
20 persons in 1994?

21 A. I was -- it was affecting me a little bit. I
22 asked for the transfer.

23 Q. I'm sorry. I didn't catch that. What did --
24 what did you say?

25 A. It was affecting me a little bit. I -- I

1 didn't -- I asked for the transfer.

2 **Q. How was --**

3 A. And actually, when I -- when I -- actually,
4 when I transferred out of crimes against persons, I did
5 go to the northeast station for one year before I went
6 to crimes against children.

7 **Q. How was it affecting you?**

8 A. It -- it was just -- I -- I didn't want to do
9 it anymore, and I had trouble taking some of the scenes,
10 you know, the smell and stuff of it.

11 **Q. Any other reason?**

12 A. No. It's -- I asked for it, and that's --
13 that's basically why I asked for the transfer.

14 **Q. In 1993, were there different groups within**
15 **crimes against persons?**

16 A. Yeah. Every -- everybody had their friends
17 that they hung around with.

18 **Q. Who was -- who was in your group in 1993?**

19 A. Probably me and Detective Graves, Detective
20 Hinojos, and I forget the other guy's name. I -- I was
21 friends with those guys.

22 **Q. Who was in Al Marquez's group?**

23 A. Al Marquez hung around Detective Tony Tabullo.
24 They worked together for a long time. It was just those
25 two. And Marquez would hang out on everybody, really,

1 but that was his main partner, Detective Tabullo.

2 Q. You said Al Mar- -- did you say Marquez would
3 hang out with everybody?

4 A. Yeah, pretty much. He was -- he was just an
5 outgoing person, so he was always with everyone.

6 Q. In 1993, were you aware of conflicts between
7 groups at crimes against persons?

8 A. No.

9 Q. Sitting here today, you don't have any
10 intention to move out of the country, do you?

11 A. No, I don't.

12 Q. Or to move out of the state?

13 A. Huh?

14 Q. Or to move out of the State of Texas?

15 A. No. In fact, I don't travel at all. I think,
16 in the last 50 years, I went to Santa Fe once and I -- I
17 really don't go -- I -- I don't travel at all.

18 Q. Fair enough.

19 Where and when were you trained in
20 conducting investigations?

21 A. Okay. When and where what?

22 Q. Were you trained in conducting investigations.

23 A. When I first got the OJ- -- to the crimes
24 against persons, you were paired with a partner, and you
25 would basically -- I guess, OJT.

1 Q. And "OJT" means "on-the-job training"; is that
2 right?

3 A. Yes.

4 Q. Who was your -- who were you paired with when
5 you joined crimes against persons?

6 A. I was paired with, like I said, Al Marquez on
7 the first murder for about a month and then with Johnny
8 Guerrero for a number of years, and then with different
9 people after that.

10 Q. So Al -- Al Marquez gave you on-the-job
11 training when you were a new detective; is that right?

12 A. Yeah, for -- yeah, when I -- I was with him
13 about a month, and we were working that case, and he was
14 training me on that case.

15 Q. And you also attended some detective schools;
16 is that right?

17 A. Yes.

18 Q. Did any of those detective schools discuss the
19 subject of criminal investigation?

20 A. Yeah.

21 Q. When and where did you receive training at
22 schools on criminal investigation?

23 A. A lot of it was in the city. I remember going
24 to New York once and California once.

25 Q. And you had -- by 1993, you had already worked

1 several years in crimes against persons, right?

2 A. Yes.

3 Q. Some of these schools where you were trained in
4 criminal investigation, did you attend them prior to
5 1993?

6 A. Yes. There were some I -- I did before that.

7 Q. And so in -- in your training and practice as
8 of 1993, would you agree that the key to an
9 investigation is keeping an open mind?

10 A. Yeah.

11 Q. Is it important to always follow evidence
12 objectively?

13 A. Yes.

14 Q. Is it important to always be open to the idea
15 of being wrong?

16 A. Yes.

17 Q. Are you trained -- were you -- strike that.

18 Were you trained -- and let me just say
19 that when I'm asking about your training and practice,
20 I'm really interested in what your training and practice
21 was as of 1993 because that's the subject of Daniel
22 Villegas's criminal investigation. And so I'd like us
23 to agree that our reference point when we're talking
24 about the past is 1993, unless either of us says
25 otherwise. Is that fair?

1 A. Yes. You're talking about training and
2 practice, you said?

3 Q. Yes, sir.

4 A. Okay.

5 Q. And so my question is, as of 1993, had you been
6 trained never to engage in tunnel vision?

7 A. I -- I didn't understand that.

8 Q. Yeah.

9 Had the concept of tunnel vision come up in
10 your training?

11 A. I don't recall it coming up.

12 Q. Okay. Had you been trained that it was
13 important not to just focus on one suspect and only
14 collect evidence that would show that that suspect is
15 guilty?

16 A. No.

17 Q. So you had not been trained that there's a risk
18 of focusing in on one suspect too soon?

19 A. Well, I'm not sure what you're asking me. I --
20 when you do an investigation, you follow where the
21 evidence leads you, and you may have several suspects in
22 a case, so you -- yeah, you keep an open mind. You
23 investigate the case from there.

24 Q. Yeah.

25 So even if you think you know who this --

1 who the real criminal is, it's important not to ignore
2 evidence that could point to other suspects; is that
3 right?

4 A. Yes.

5 Q. And were you trained that the most important
6 thing in an investigation is to avoid arresting the
7 wrong person?

8 A. Yes.

9 Q. And that that's even more important than
10 getting the right person, making sure you don't arrest
11 someone who didn't do it.

12 A. Yeah, I think so.

13 Q. And in your practice, did you approach all of
14 your interviews in your criminal investigations with
15 that in mind?

16 A. Dang, that car came by. Can you repeat it?

17 Q. No problem.

18 In your investigations, did you approach
19 all your interviews that way, keeping in mind the
20 importance of not arresting the wrong person?

21 A. Yes.

22 Q. Okay. And would you agree that it is critical
23 to remain thorough and unbiased in criminal
24 investigation?

25 A. Yes.

1 Q. And that it's important to remain thorough and
2 unbiased to protect the innocent in your investigations.

3 A. Yes.

4 Q. And that remaining thorough and unbiased helps
5 you to convict the guilty.

6 A. Yes.

7 Q. Did you receive training on how to document
8 your investigations?

9 A. Yes.

10 Q. And when conducting criminal investigations,
11 where did you record your notes?

12 A. I -- I had a legal pad where I -- I jotted down
13 notes.

14 Q. And did you take notes contemporaneous, at the
15 same time, as you conducted interviews?

16 A. Yes, I would.

17 Q. And did you also take notes at the same time as
18 you conducted other investigation, like viewing a crime
19 scene?

20 A. Yes.

21 Q. Did you take notes at the same time as you
22 interrogated a suspect?

23 A. Yes.

24 Q. And were you required to type a report to --
25 strike that.

1 Were you required to ensure that the
2 information from your notes was recorded in the police
3 file?

4 A. Yes.

5 Q. Did you review your notes with other detectives
6 or other individuals before recording them for the
7 police file?

8 A. No.

9 Q. In 1993, did you use a computer program to type
10 your reports?

11 A. Yes.

12 Q. Did -- did you always write your own reports as
13 of 1993?

14 A. Most times, yes.

15 Q. When would -- when would you not write your own
16 reports?

17 A. Sometimes you would go out with a partner. You
18 did the same thing. One partner would document --

19 Q. Uh-huh.

20 A. -- what you did.

21 Q. Right. So if multiple detectives participated
22 in, say, the same interview, they wouldn't all
23 necessarily have to write separate reports, right?

24 A. Right.

25 Q. But if a report had your name signed on it,

1 that means you were the one who wrote it; is that fair?

2 A. Can you say that again?

3 Q. Yeah.

4 If -- if a report has your name signed on
5 it, that would signify that you were the one who
6 actually wrote that report; is that fair?

7 A. Well, I mean, sometimes you are a witness, you
8 sign to it. But if I sign to it right below the
9 document, then it was mine.

10 Q. Okay. And did you ever type up reports for
11 other officers to sign, not as witnesses, but as the
12 attesting officer?

13 A. Yes.

14 Q. When would you type reports for other officers
15 to sign?

16 A. Well, I -- I did it in this case. I did an
17 affidavit that -- I had to get information from an
18 officer to put down the probable cause for the
19 affidavit.

20 Q. Right. So you would -- you might type a
21 probable cause affidavit to go and get a warrant, right?

22 A. Yes.

23 Q. And you might do that even if another officer
24 is going to be the one to sign -- to sign on it; is that
25 right?

1 A. Yes.

2 Q. But what about, say, supplemental reports?

3 Would you ever type up another officer's supplemental
4 report?

5 A. No.

6 Q. Would you ever type up any kind of report for
7 another officer other than an affidavit for a warrant?

8 A. Well, just -- if I'm understanding you
9 correctly, like an affidavit or a warrant, I would.

10 Q. Okay. Can you think of any other kind of
11 document that you would type up for another officer?

12 A. There might be, but I can't think of any right
13 now.

14 Q. In 1993, did the El Paso Police Department have
15 policies regarding report writing?

16 A. I'm sure they did.

17 Q. What were those policies?

18 A. Well, basically, just to document what you've
19 done.

20 Q. Did the -- all right.

21 And did El Paso's pol- -- so was it typical
22 in investigations that you would have both handwritten
23 notes and a typed report of your investigation?

24 A. Well, I would always transcribe my notes into
25 my supplement, but I wouldn't keep my notes. I might

1 have them at one time, but it's not something I would
2 keep.

3 Q. Did -- was -- did the department have any
4 policy preventing you from keeping your handwritten
5 notes?

6 A. No. It's just that there was no policy on
7 keeping them, so I didn't.

8 Q. And was there any policy preventing you from
9 putting your handwritten notes in the police file?

10 A. No.

11 We lost the voice.

12 Q. I know. I -- I went muted for a second to --

13 A. Okay.

14 Q. Would you typically try to type up your
15 notes -- well, strike that.

16 Did you have any practice as to how long
17 you would let -- how much time you would let pass
18 between taking handwritten notes and typing up your
19 notes?

20 A. Usually no more than a couple of days for me.

21 Q. Okay. And is it important to type up your
22 notes quickly in an investigation?

23 A. Well, I would type mine up every couple days.
24 I thought that that was adequate.

25 Q. Yeah. And typing up your notes every couple

1 days, did that help you make sure you didn't forget any
2 details that might be important?

3 A. Yes.

4 Q. And did that help you organize your
5 investigation so you could refer to what had already
6 been accomplished?

7 A. Yes.

8 Q. Okay. After you typed a report, would it be
9 reviewed by anyone else at -- by anyone else?

10 A. We would approve our own.

11 Q. So as a detective, you were able to write your
12 report and approve your report; is that right?

13 A. Yes.

14 Q. Did it receive any further review?

15 A. Sometimes a sergeant might read it.

16 Q. Okay.

17 A. But probably not all the time.

18 Q. Okay. There was not a practice in 1993 that
19 every report be reviewed by a sergeant; is that fair?

20 A. No. I don't know if there's a policy. I -- it
21 didn't happen for our section.

22 Q. Okay. Would you typically share your reports
23 with other detectives?

24 A. They were there to review. Usually, there
25 would be a case agent, and he would put the reports in a

1 binder.

2 Q. Uh-huh. Other than the case agent, was it your
3 practice to share the reports with other investigating
4 detectives?

5 A. No. We -- what we did is we'd have a meeting,
6 and we'd brief everybody on what was -- what was done.

7 Q. Uh-huh. Was your training that -- were you
8 trained that it's important in investigation to document
9 things as they happen?

10 A. Not -- I wouldn't document maybe going through
11 a scene, or anything, and writing everything down right
12 then and there. I -- sometimes I might make notes after
13 I left the scene on what I saw, but it's not something
14 that you always have a pen and paper in hand ready to
15 write down everything that happened.

16 Q. Right. You don't always have to write down
17 everything the second it happens; is that right?

18 A. Right.

19 Q. But you want -- but you're trying to -- you're
20 trying to take notes soon after you discover relevant
21 information; is that right?

22 A. Yes.

23 Q. And were you trained that it's important to be
24 thorough in documenting an investigation?

25 A. Yes.

1 Q. And were you trained that any pertinent
2 information in an investigation should be reduced to
3 writing?

4 A. Can you repeat that?

5 Q. I can.

6 Were you trained that all pertinent
7 information in an investigation should be reduced to
8 writing?

9 A. Yes.

10 Q. Were you trained that all -- all evidence of a
11 suspect's guilt should be recorded in writing?

12 A. Yes.

13 Q. Were you trained that all evidence that
14 indicates that a suspect is not guilty should be
15 recorded in writing?

16 A. Everything in the case should be recorded, yes.

17 Q. Right.

18 So whether it shows a suspect is guilty or
19 it tends to show that a suspect is innocent, it should
20 be in writing; is that fair?

21 A. Yes.

22 Q. And it's important to confirm that everything
23 you record is accurate; is that right?

24 A. Yes.

25 Q. And that includes what you were told by

1 witnesses in an investigation; is that right?

2 A. Yes.

3 Q. And that also includes how information is
4 obtained from witnesses; is that right?

5 A. Yes.

6 Q. And if a witness contradicts himself or
7 herself, that should be written down; is that right?

8 A. Yes.

9 Q. And the -- the time when you talk to a witness
10 should be written down; is that right?

11 A. Yes.

12 Q. And the time that various events occur during
13 an investigation should be recorded; is that right?

14 A. Yes.

15 Q. And you may need to rely on the times you
16 write -- you write down later; for example, while
17 testifying at trial. Is that right?

18 A. Can you repeat that?

19 Q. Yeah.

20 It's important to document the time things
21 happen in an investigation because you may need to
22 testify to that later; is that right?

23 A. Yes.

24 Q. And how -- in 1993, were there -- in 1993, was
25 there a central case file for investigations?

1 A. The case agent would keep a binder of a case,
2 and everything would be in there.

3 Q. Okay. Other than the case agent's binder, was
4 there any other place where materials about
5 investigations were kept?

6 A. Yes, later. Because we -- we didn't want to
7 put it in the computer system and have everybody read
8 about a murder investigation, so we would al- -- we
9 would always keep those in the CAP office, and they
10 wouldn't be entered into the computer until later.

11 Q. I see. So during the investigation, everything
12 is in the case agent's binder; is that right?

13 A. Yes.

14 Q. And it isn't entered into the computer until
15 later because there is no need to disclose details about
16 homicides to everybody in the department; is that right?

17 A. That's correct.

18 Q. Okay. And -- and did you have concern about
19 nonpublic details about investigations becoming
20 available to the public?

21 A. Yeah, that's always a concern.

22 Q. Okay. And is that because -- is that because,
23 when you interview witnesses, you wanted to see if they
24 know nonpublic information about a crime?

25 A. Exactly.

1 Q. And you can't do that if the information leaks,
2 right?

3 A. Correct.

4 Q. So in investigations where you were not the
5 case agent, were you able to access the reports -- or
6 the statements taken by other detectives?

7 A. Yeah. It would be accessible to me.

8 Q. How would you access them?

9 A. I -- I would just go to the case agent and ask
10 to see them. But if it wasn't my case -- because there
11 used to be a lot of murders, more than there are today.
12 I'm really not interested in what people say to other
13 detectives and statements. I'm assigned to do a part of
14 that investigation. I do that part, and I'm not really
15 curious enough to -- to -- to go into other parts of it,
16 unless I was the case agent. I had to know everything.

17 Q. I understand.

18 But -- and, of course, you could also get
19 information just by talking to the det- -- other
20 involved detectives without looking at the statements
21 and such; is that fair?

22 A. Yes, you could.

23 Q. So in an investigation, you might conduct an
24 interview where it's important to know what other
25 witnesses have said; is that right?

1 A. Yes.

2 Q. And you could do that either by talking to the
3 detectives or by asking the case agent to see the case
4 file; is that right?

5 A. Yes.

6 Q. Okay. And when you were not the case agent,
7 did you keep copies of your own notes or reports on the
8 case?

9 A. I think I made one supplement. It wasn't very
10 long.

11 Q. Okay. And did you -- in 1993, did you ever
12 keep copies of other detectives' reports in -- in a --
13 in cases you investigated?

14 MR. JIM DARNELL: Are you talking about
15 cases where he was the case agent or cases where he just
16 was serving in an ancillary role?

17 MR. HILKE: Thank you.

18 Q. (BY MR. HILKE) In cases where you were not the
19 case agent.

20 A. No.

21 Q. So -- one second, please.

22 What, according to your training --
23 actually, give me one moment, please.

24 So in -- in -- when you interview a
25 witness, it's important to confirm the identity of a

1 witness; is that fair?

2 A. Yes.

3 Q. Do you typically ask for their name?

4 A. Yes.

5 Q. You would also ask for their date of birth?

6 A. Yes.

7 Q. Would you often ask for their Social Security
8 number?

9 A. No.

10 Q. Okay. I'd -- and do you typically try to
11 identify the witness early in the conversation?

12 A. Yes.

13 Q. And I'm going to show you -- we're going to
14 mark this Exhibit 1.

15 (Exhibit 01 marked.)

16 Q. It's going to just take me a minute to load it
17 up here.

18 A. Okay.

19 Q. Okay. So I'm now sharing my screen. This will
20 be Exhibit Number 1. This is at City 15741. And I'm
21 going to zoom in up on the top a little bit here.

22 MR. JIM DARNELL: Can you see it?

23 A. Yes, I -- okay. Now I can see it better.

24 Q. (BY MR. HILKE) Okay. And -- and, sir, looking
25 at this document, is this a statement that you took from

1 Tonya Vinson on April 12th, 1993?

2 A. Yes.

3 Q. Is this one of the documents you reviewed in
4 preparation for this deposition?

5 A. Yeah, I reviewed this one.

6 Q. And Tonya was a witness who had heard something
7 about the England/Lazo murders; is that fair?

8 A. That's correct.

9 Q. She wasn't a suspect in this -- in this
10 investigation; is that right?

11 A. No. She came to us as a -- a witness.

12 Q. Yeah.

13 And, of course, her name and date of birth
14 are present here, right?

15 A. Yes.

16 Q. And that would have been information you got
17 around the time you started taking her statement; is
18 that right?

19 A. Yes.

20 Q. And we've even got her Social Security number
21 here; is that right?

22 A. Yes.

23 Q. And --

24 A. I know there was at some point that they told
25 us we couldn't take Social Security numbers, so this is

1 probably before that.

2 **Q. That --**

3 A. But we -- but we used to.

4 **Q. I understand.**

5 But to summarize, confirming the identi- --
6 the identity of the witness is just one of those basic
7 things you do at the start of an interview; is that
8 fair?

9 A. Yes.

10 **Q. Okay. I'm going to stop sharing this now.**

11 MR. HILKE: You know, I don't know if
12 you'll need a break soon, but if you will, it's a good
13 time for me.

14 MR. JIM DARNELL: Okay. Why don't we take
15 a break? We've -- we were just fixing to do that
16 anyway.

17 MR. HILKE: Great. Let's go off the
18 record.

19 MR. ALMANZAN: Okay. Off the record.

20 (Break taken from 10:12 a.m. to 10:21 a.m.)

21 THE VIDEO TECHNICIAN: We are back on the
22 record for the deposition of Earl Arbogast being
23 conducted by videoconference. My name is Sydney Little.
24 Today is June 30th, 2022, and the time is 10:21 a.m.

25 **Q. (BY MR. HILKE) Sir, by -- by 1993, you had**

1 attended detective schools' trainings; is that right?

2 A. Well, there -- there was schools that I went to
3 that involved criminal investigations and how to
4 recover -- you know, do evidence like in different
5 places, in the desert and different places and
6 interviews.

7 Q. All right. And -- and you mentioned
8 interviews. Those trainings included conducting
9 interviews and interrogations; is that fair?

10 A. The -- the schools?

11 Q. Yes, sir.

12 A. Yes.

13 Q. Were you trained in the Reid method of
14 interrogation?

15 A. The what?

16 Q. The Reid method.

17 A. I -- I don't -- I don't know what that is.

18 Q. It's spelled R-E-I-D, Reid. Is that a method
19 of interrogation you are familiar with?

20 A. I -- I might have, but I don't know the names
21 of the type of interrogations there are.

22 Q. Were you trained to conduct thorough
23 investigations before interrogating a suspect?

24 A. Yes.

25 Q. And was it your practice to do so?

1 A. What -- can you repeat that?

2 Q. Yes.

3 Was it your practice to conduct thorough
4 investigations before interrogating suspects?

5 A. Yes. If I worked a case, I would apply -- that
6 would be my last interview.

7 Q. Uh-huh. And that was consistent with the
8 training you had received?

9 A. That would be consistent with what?

10 Q. The training that you had received.

11 A. I don't know if I learned it through training,
12 but that's what I did.

13 Q. And is it important to make absolute sure that
14 you're interrogating the correct person as a suspect?

15 A. Well, you wouldn't interrogate people as
16 suspects. You really wouldn't know how much involvement
17 they had.

18 Q. Uh-huh.

19 What, according to your training, is the
20 difference between an interview and an interrogation?

21 A. The interview is like a witness interview.
22 You're trying to get as much information as you can
23 to -- to continue on with an investigation. And I think
24 an interrogation would be that you believe somebody may
25 be a suspect, but that you don't know.

1 Q. Right.

2 A. You're unsure of.

3 Q. Would you agree that an interrogation should
4 not be conducted unless you have a good reason to
5 believe that someone is a suspect in a crime?

6 A. Hang on. I'm not quite getting you.

7 Q. Yeah.

8 Is there a difference between an interview
9 and an interrogation?

10 A. Yeah, I guess there is.

11 Q. Okay. And -- and -- and you might interview
12 anybody in a case because -- you might interview anyone
13 who has informa- -- who might have information about a
14 crime in an investigation; is that fair?

15 A. Yes.

16 Q. But you only interrogate someone when you think
17 they may be a potential suspect; is that right?

18 A. It may start out as an interview and then
19 turn -- and turn into a interrogation, that's true.

20 Q. Right, but if -- if you don't have reason to
21 believe that someone is a potential suspect, you're not
22 going to interrogate them until you've got some reason
23 to believe they're a potential suspect; is that fair?

24 A. Yeah, I would -- I would try to wait, yeah.

25 Q. Were you trained that in conducting an

1 interrogation, you're operating with the presumption
2 that the person you're interrogating is guilty?

3 A. There's a possibility.

4 Q. Uh-huh. Were you trained that an interrogation
5 should only take place after you've concluded that the
6 person you're interrogating is probably guilty?

7 A. You would try to wait, yes.

8 Q. And has the concept of a misclassification
9 error come up in your training?

10 A. Mixed classification errors?

11 Q. Yeah, mis- -- misclassification errors.

12 A. I -- I don't know what that is.

13 Q. Yeah.

14 Has the idea that there's a risk of
15 mistakenly assuming that an innocent person is guilty
16 and then trying to interrogate a confession out of them;
17 that that's a risk detectives need to try to avoid?

18 A. And the question was?

19 Q. The question was, are you trained on that risk?

20 A. No, I don't believe so. It's just something
21 I -- I did through investigations. Everybody has their
22 own style, but I would try to get as much information as
23 I could and conclude all witness interviews before I
24 pulled in a suspect.

25 Q. Right. You -- you tried to be a thorough

1 detective and watch out for the risk of coming to --
2 jumping to conclusions too soon that someone is guilty;
3 is that fair?

4 A. Yes.

5 Q. But that's not something you can tie to any
6 training you received. That was just your practice as a
7 detective; is that fair?

8 A. Yeah, it -- oh, I'm sorry. It was something I
9 picked up, I guess, from my time with Johnny Guerrero
10 and other detectives working the investigations when I
11 went to CAP.

12 Q. That was -- right. That was on-the-job
13 training, not -- not detective school or other training;
14 is that fair?

15 A. Yeah, I don't -- yeah. Yes.

16 Q. And what, according to your training and
17 practice, is the goal of an interrogation?

18 A. What is the goal of an interrogation?

19 Q. Yes, sir.

20 A. To find out the involvement of -- of a suspect
21 you pull in. I -- I mean, you -- you may pull in two or
22 three suspects at the end, and some of them might be
23 weak. Some of them might be a strong suspect. So
24 it's like you say, you keep an open mind and -- and the
25 goal is to try and find out the involvement -- level of

1 involvement of what any suspect has.

2 Q. Okay. And one kind of involvement that might
3 come up in an interrogation is that the suspect is
4 guilty of the crime; is that fair?

5 A. Yes.

6 Q. In an interrogation, once you've concluded that
7 a suspect is guilty, is the goal to get a confession
8 from them?

9 A. Did I what?

10 Q. In an interrogation, once you have concluded a
11 suspect is guilty, is the goal then to get a confession
12 from them?

13 A. Yes. At that point, if you cross that line
14 into a strong suspect, you would read him his Miranda
15 rights and then interrogate him.

16 Q. And in some cases, you might learn -- during an
17 interrogation, they might say something that lets you
18 cross that line, and then you're trying to get a
19 confession from them; is that fair?

20 A. Yeah. Yes.

21 Q. And other times, you might have so much
22 evidence already that you know you're trying to get a
23 confession before the interrogation even starts; is
24 that --

25 A. Yes.

1 Q. -- fair?

2 A. Yes.

3 Q. What, according to your training, are the
4 primary techniques of an interrogation?

5 A. The final goal is to actually get a statement.

6 Q. Uh-huh.

7 A. I -- I -- there are certain things that go
8 along with that. You know, you -- you follow procedural
9 rules. You give Miranda rights and -- and you
10 definitely want to get some type of corroboration in
11 that statement and -- but, basically, that's it.

12 Q. And then what are the techniques you do -- you
13 use -- what are the primary techniques you're trained to
14 use to get a suspect to talk to you?

15 A. I would do different things with different
16 people. I mean, I've -- I've talked to people, and if
17 it's a strong case, I've laid out evidence in front of
18 them, and they've given me statements.

19 Q. Uh-huh.

20 A. I mean, I've had -- I -- I -- I actually cried
21 with somebody one time. I've -- if I see somebody's
22 really religious when I pick them up at the house, I'll
23 try to use religion. But what -- whatever, you know,
24 goes with that case is how you might want to interview
25 somebody.

1 Q. Yeah.

2 Were you trained in any specific kinds of
3 techniques that are useful in interrogations?

4 A. I mean, yeah. I suppose you learn some
5 techniques. Some you take back with you. Some you
6 don't.

7 Q. What techniques do you recall learning through
8 your training?

9 A. There -- there's different things. I mean,
10 there is techniques that have you interviewing a suspect
11 with you talking to a suspect, laying out your case, and
12 you get to the point where you're going to elicit a
13 response from the suspect, and if he looks like he's
14 going to deny you, you don't want him to deny you. You
15 just keep talking and -- and those are the type of
16 things you learn in interrogation school.

17 Q. Sure.

18 So in those situations, you're trying to
19 keep control of the interaction. You're trying to avoid
20 it being just a long denial from someone when there's
21 all this evidence of their guilt; is that fair?

22 A. Yes.

23 Q. And so to -- are you trained to -- keeping with
24 that example where you have all this evidence of a
25 suspect's guilt, is it your training at some point to

1 **accuse a suspect of having committed the crime?**

2 A. It depends on the case. I mean, you may have
3 an overwhelming amount of evidence --

4 **Q. Uh-huh.**

5 A. -- and -- and you would do that. It depends on
6 a case-by-case basis.

7 **Q. And if it's necessary to cut off a suspect's**
8 **denials, are you trained to repeat those accusations of**
9 **guilt during an interrogation?**

10 A. I -- I've never done that. I -- I didn't take
11 that -- it's not something I really believed in.

12 **Q. And so I understand that that wasn't your**
13 **practice, but was it your training to do so?**

14 A. That was just one of the techniques that was
15 taught to us. It was taught to me at one interrogation
16 school.

17 **Q. Okay. And were you also trained to accuse**
18 **suspects of lying when they denied accusations that you**
19 **had evidence of?**

20 A. That might happen.

21 **Q. Sure. And what -- were you trained to accuse**
22 **suspects of lying?**

23 A. What would I say?

24 **Q. Were you -- were you trained -- was it your**
25 **training to accuse suspects of lying?**

1 A. Yes. I would -- I would point out the evidence
2 that we have and say, "Yeah, you're not telling me the
3 truth."

4 Q. And that was -- that was consistent with the
5 training you had received?

6 A. Yes.

7 Q. And -- and then you talked about cutting off
8 denials. Was that both something you were trained to do
9 and something that you did in your practice?

10 A. No. That was something that was taught to me
11 at one of the schools, and I remember that because I --
12 I've never used that.

13 Q. Uh-huh.

14 And were you trained to use false evidence
15 ploys, where you would pretend to have some evidence
16 that doesn't exist?

17 A. No.

18 Q. Okay. So that never arose in the training you
19 received.

20 A. No.

21 Q. And did you ever use false evidence ploys?

22 A. No. If I didn't have any evidence, no.

23 Q. Are you -- were you trained to put pressure on
24 suspects to try to increase their anxiety?

25 A. Was I trained in -- can you repeat it?

1 Q. I can.

2 Were you trained to try to put pressure on
3 suspects to try to increase their anxiety during --

4 A. Yeah.

5 Q. -- interrogations?

6 A. Yeah, I guess -- I guess you -- you confront
7 them with certain things, and you might pressure them,
8 yes.

9 Q. Yeah.

10 And is it fair to say that if you believe a
11 suspect is guilty, you want them to feel like they've
12 been caught, like they aren't going to be able to talk
13 their way out of this crime that you've got evidence
14 that they are guilty of?

15 A. That would be good, yes.

16 Q. And was it your practice to use pressure to try
17 to increase a suspect's anxiety?

18 A. It's -- like I said, I used different tactics.
19 I -- I -- I tried to use evidence that I had, and I've
20 used pressure as far as a person's religion and
21 different things like that and, you know, it's just
22 different things. It depends on a case-by-case basis
23 what I would use.

24 Q. And are you trained to use inducements, meaning
25 suggestions that a suspect will benefit if they confess

1 during an interrogation?

2 A. No.

3 Q. And are you trained to suggest that the
4 prosecutor might look favorably on it if they tell you
5 what they know?

6 A. No. You would never do that.

7 Q. You'd never do that?

8 A. No.

9 Q. Were -- were you trained that a suspect might
10 face a lesser punishment if they confess to a crime?

11 A. No.

12 Q. And in your practice, did you ever suggest --
13 did you ever use inducements during interrogations?

14 A. No.

15 Q. And it's -- am I correct that your training was
16 it would be improper to use inducements in
17 interrogations?

18 A. Yeah, it would be improper, and it might taint
19 the -- the statement.

20 Q. Are you trained to use minimization techniques
21 in interrogation?

22 A. I -- I am not familiar with names. I don't
23 know if I've used it.

24 Q. Yeah. Were you -- were you trained to use
25 techniques suggesting that a suspect might minimize

1 their -- I'm trying to think of -- strike that.

2 Are you trained to suggest that a suspect
3 can minimize their involvement by talking to you, but
4 won't be able to if they refuse to talk?

5 A. No.

6 Q. And are you trained to suggest that maybe the
7 suspect didn't mean to commit the crime, or it was an
8 accident or sort of minimize how bad what they did was?

9 A. Well, if -- if -- if somebody had told me that,
10 I would take a statement from them on that. And if I
11 had evidence that suggested further after I took that
12 statement, I would confront him with the evidence, and
13 then he may give a second statement.

14 Q. Sure. So -- right. If -- if you learned
15 during an interrogation that a person's involvement is
16 more than you thought, you might take an additional
17 statement to pin them down on what they did; is that
18 fair?

19 A. Yes. Usually, it -- it would happen if a
20 suspect admitted to a crime and -- and he didn't tell
21 the whole truth, but I had evidence to the contrary, and
22 then I would confront -- I would always take that
23 statement, and then I would confront them with the
24 evidence, and if he wanted to give a second statement
25 correcting it, I would take a second statement.

1 Q. Yeah.

2 But would you sugge- -- was it your
3 training to suggest that, you know, for example, a
4 suspect didn't mean to kill the person, or maybe it was
5 self-defense or something that suggests that it wasn't
6 as bad -- that what they did really wasn't that bad?

7 A. I've had people do that, and I've taken the
8 statement and just attached it with the -- made it part
9 of the case file.

10 Q. Right, but was it your training to suggest to a
11 suspect that their -- that how bad they did was
12 lesser --

13 A. Oh, okay.

14 Q. -- to get them to talk to you?

15 A. I understand now. No, I wouldn't.

16 Q. Okay. And was that a technique that you were
17 trained to use in any way?

18 A. At some point, yes.

19 Q. Okay. So that was another technique you
20 were --

21 MR. JIM DARNELL: Just what's -- Wally, I'm
22 not sure y'all were communicating. When you said that
23 was a technique he was trained on, are you saying he was
24 trained to use it or not to use it?

25 Q. (BY MR. HILKE) Yes. I'm asking if you were

1 trained to use that technique.

2 A. Okay. And that's -- and that was the technique
3 of making a person seem more innocent?

4 Q. Yes, sir.

5 A. No. I -- I was never trained in that.

6 Q. Okay. And in your practice, you never used
7 that technique; is that right?

8 A. I didn't, no.

9 Q. According to your training, what is the
10 difference between an incriminating statement and an
11 admission?

12 A. Well, I really don't see -- distinguish between
13 the two. They were both -- for me, they would both go
14 on a confession form.

15 Q. Okay. And --

16 A. If they incriminated themselves, it would go on
17 a confession form. If they gave a confession, it would
18 go on a confession form.

19 Q. Okay. And were you trained of any difference
20 between an admission and a confession?

21 A. To me, they're the same thing.

22 Q. Okay. Were you trained to avoid psychological
23 coercion of suspects?

24 A. What was the word?

25 Q. "Psychological coercion."

1 A. No. I don't even know what -- I'm not a
2 psychologist. I can't -- I don't think I ever have.

3 Q. Yeah. You've -- you've never asked a suspect
4 to lie down on a couch for you and talk about their
5 mother or father?

6 A. Oh, no. No.

7 Q. All right. I'm just joking.

8 Did you -- were you trained that suspects
9 may feel pressure to confess even if they are innocent?

10 A. If suspects -- that -- that you would make them
11 feel --

12 MR. JIM DARNELL: He's asking if you were
13 trained that way.

14 A. Oh, no.

15 Q. (BY MR. HILKE) So it -- you received no
16 specific training about how to avoid taking -- strike
17 that.

18 Okay. And in your practice, did you have
19 on-the-job training about -- about suspects feeling
20 pressure to confess even if they are innocent?

21 A. I had no training to that, no.

22 Q. Did -- were you trained that interrogations
23 should be recorded?

24 A. At some point. We never used to, and then time
25 changes, and then, eventually, yeah, they -- they became

1 recorded, but I never did it. It -- I was out before
2 that.

3 Q. Okay. And so at the time you were still in
4 crimes against persons, you had not been trained to
5 con- -- to record con- -- I'm sorry. Strike that.

6 At the time you were in crimes against
7 persons, you had not been trained to record
8 interrogations; is that correct?

9 A. That's correct.

10 Q. And it wasn't the practice when you were --
11 when you were at crimes against persons to record
12 interrogations, was it?

13 A. To record?

14 Q. Yes, sir.

15 A. No.

16 Q. Was there any departmental policy in 1993
17 preventing you from recording interrogations?

18 A. No. I don't think it was mentioned.

19 Q. So is it fair to say that in criminal
20 investigation, sometimes people provide inaccurate
21 information to the police?

22 A. Can you repeat that?

23 Q. Would you agree that in criminal investigation,
24 people sometimes provide inaccurate information to the
25 police?

1 A. Yes.

2 Q. And part of your job as a detective is to
3 figure out what's true and what's false; is that right?

4 A. Yes.

5 Q. And sometimes false information you get, a
6 person might just have made a mistake or remembered
7 something incorrectly; is that right?

8 A. Yes.

9 Q. But other times, someone might be trying to
10 deceive you; is that right?

11 A. Yes.

12 Q. And you want to know if the information you get
13 is reliable or not, right?

14 A. Yes.

15 Q. And you also want to know if someone's
16 intentionally lying to you, right?

17 A. Well, that -- intentionally lying?

18 Q. Yes, sir. That you want to know if someone is
19 intentionally lying to you as a detective; is that
20 right?

21 A. That would be nice, yes.

22 Q. Yeah.

23 And one way to test a witness's reliability
24 is to see if they know nonpublic facts about a crime; is
25 that right?

1 A. That would be one way, yes.

2 Q. And we talked about this a little earlier.

3 That's part of why you -- crimes against persons didn't
4 share murder investigation reports with the whole
5 department, right?

6 A. Right.

7 Q. And it's -- and when talking to witnesses on a
8 homicide, it's important not to give nonpublic
9 information to those witnesses, right?

10 A. Yes.

11 Q. Because you want to see what they know, not
12 just what you already know; is that right?

13 A. Yes.

14 Q. And so in interviews on a homicide, it's
15 important to wait for the witnesses to provide nonpublic
16 information before you give it to them; is that right?

17 A. Yes.

18 Q. And people -- and you talked earlier about
19 confessions. When taking a confession, you want
20 corroborating information; is that right?

21 A. Yes, always.

22 Q. And one reason for that is that people
23 sometimes give false confessions to the police; is that
24 right?

25 A. Yes. It's happened. You see it -- you see it

1 throughout the country. It -- you know, it happens.

2 Q. Yeah.

3 And just because someone confesses to you
4 doesn't mean your investigation is done, right?

5 A. That's true, yes.

6 Q. What you'd like to do is go confirm the
7 corroborating information you got from that confession,
8 right?

9 A. Yes.

10 Q. So -- and because of that, it's critically
11 important to document if nonpublic information is
12 provided to a murder suspect, right?

13 A. Yes.

14 Q. Because if you provided the information, then
15 that information can't be used as corroboration, right?

16 A. If he gave -- oh, if I gave him nonpublic,
17 yeah.

18 Q. Yeah.

19 A. Yeah. It wouldn't be corroboration.

20 Q. And would you agree that for the same reason,
21 it's important to avoid leading questions during an
22 interrogation?

23 A. Yes.

24 Q. You want the details of the crime to come
25 directly from the suspect, not to be given from the

1 detective to the suspect; is that right?

2 A. Yes.

3 Q. In taking a confession, should the
4 confession -- well, strike that.

5 Was it your training to try to -- well,
6 strike that.

7 In your practice when taking a confession,
8 was it typically the detective who actually typed up the
9 confession statement?

10 A. Yes.

11 Q. And in typing the confess- -- confession
12 statement, were you trained that the confession should
13 be in the suspect's words as much as possible?

14 A. Yes.

15 Q. And in taking that confession -- in taking a
16 confession -- strike that.

17 In typing up a confession, is there some
18 question and answer as you're typing the confession to
19 get the words from the suspect?

20 A. Well, for me, I would -- I would get the whole
21 story from the suspect if he was going to confess, and
22 then I would reduce it to paper. And I would start it
23 out, and I wouldn't remember everything he said, and so
24 I would put down what he said as much as I -- as I could
25 in his own words. And then when I got to a point, I

1 would ask him -- well, an open-ended question, "What
2 happened next?" And then I would go on that way until
3 his confession was done.

4 Q. Got it. So you were trying to get somewhat of
5 a narrative to get it from the suspect in their own
6 words; is that fair?

7 A. Yes.

8 Q. And there may also be just yes or no details
9 that are more short question and answer to include; is
10 that fair?

11 A. Yes. I usually ask open-ended questions.

12 Q. Okay. Were you trained that in typing up a
13 confession, you should intentionally insert errors that
14 the suspect can correct in handwriting?

15 A. No. There -- there would be errors. So it
16 wasn't possible to take a statement with -- without
17 errors, but any errors would always be initialed by him.
18 But I wouldn't put something in a confession that was
19 wrong and then have him tell me that was wrong. I
20 wouldn't --

21 Q. Got it.

22 A. -- do it on purpose.

23 Q. Yeah. So your -- accor- -- in your practice,
24 any errors in confessions you took -- strike that.

25 In your practice, any errors in a

1 confession statement were accidental, and the correction
2 is because a mistake was made that needed to be fixed.

3 A. Yes.

4 Q. And you weren't trained to take confessions any
5 other way than that; is that right?

6 A. No.

7 Q. Okay. And what -- and we've just discussed
8 these various ways that you tried to avoid feeding
9 nonpublic information to criminal suspects; is that
10 fair?

11 A. Yes.

12 Q. And was your practice consistent with your
13 training in those ways?

14 A. I didn't get that again.

15 Q. Yeah.

16 Was -- was the way you did it -- was the
17 way you did that consistent with the training you had
18 received?

19 A. Yes.

20 Q. In 1993, who was your supervisor at crimes
21 against persons?

22 A. It was Sergeant Johnson, Sergeant Ocegueda, and
23 it was Lieutenant Saucedo.

24 Q. Uh-huh. And did you have any -- well, strike
25 that.

1 Did you have -- how did those supervisors
2 supervise your investigations?

3 A. Basically, when a murder happened, we would
4 always have meetings. Like the next morning, you got a
5 bunch of witness statements. You had a bunch of
6 witnesses to talk to. Teams would be sent out to take
7 those statements and do any other follow-ups that needed
8 to be done. And then you would meet again, and the
9 sergeant would head that, and then he -- he would go
10 forward from the information that was taken at the table
11 there.

12 Q. That makes sense.

13 And did the sergeants do anything else in
14 supervising homicides?

15 A. No. Basically, that's it.

16 Q. Okay. And did your supervisors expect you to
17 follow the training you had received?

18 A. Yes.

19 Q. And did -- did your sergeants ever instruct you
20 or guide you to find and record evidence pointing to
21 suspects' innocence, as well as their -- as well as
22 their guilt?

23 A. I need to hear that again.

24 Q. Sure.

25 Did your supervisors ever tell you, "Make

1 sure you're getting evidence that -- evidence showing
2 suspects' innocence, as well as their guilt"?

3 A. No. Really, it was just to solve the case.

4 Q. Just to solve the case?

5 A. Yes.

6 THE WITNESS: May I get with my attorney
7 one minute?

8 MR. HILKE: Sure. We can take a break.

9 THE VIDEO TECHNICIAN: We're off the
10 record. The time is 10:55 a.m.

11 (Break taken.)

12 THE VIDEO TECHNICIAN: We are back on the
13 record for the deposition of Earl Arbogast being
14 conducted by videoconference. My name is Sydney Little.
15 Today is June 30th, 2022, and the time is 10:56 a.m.

16 Q. (BY MR. HILKE) You know, in your career,
17 you've had internal affairs investigations involving
18 you; is that right?

19 A. Yes.

20 Q. And in your understanding, what was the process
21 for an internal affairs investigation?

22 A. Well, a citizen will complain on you, or maybe
23 there was a procedural violation within the department,
24 and they would -- they would come in and take a
25 statement from you.

1 Q. And you've given statements in response to
2 internal affairs investigations before; is that right?

3 A. Yes, I have.

4 Q. And did the -- did the people taking the
5 statement from you work for the internal affairs
6 division?

7 A. I -- I didn't hear that. I wanted to add in
8 something that I just remembered.

9 Q. Oh, I'm sorry. Please go ahead. Yes.

10 A. I did a stint in internal affairs for about six
11 months.

12 Q. Oh, when did you do that?

13 A. I think it was when I left CAP once. And then
14 I went to the north- -- that's when I went to the
15 northeast and then the crimes against children.

16 Q. Okay.

17 A. I didn't think about it until you started
18 mentioning IA.

19 Q. No. I appreciate it.

20 That would have been after the England/Lazo
21 murders, then; is that right?

22 A. Yeah.

23 Q. And did you take statements when you were
24 working in internal affairs?

25 A. Yes.

1 Q. And so you -- you have some familiarity with
2 the internal affairs process; is that right?

3 A. Yes.

4 Q. So in internal affairs investigations, is it
5 always an internal affairs officer who takes the
6 statement?

7 A. Yes.

8 Q. Okay. And the statements that are taken are --
9 are typed up; is that right?

10 A. Yeah.

11 Q. When you gave statements, did you type up the
12 statements, or did the IA officers type up the
13 statements?

14 A. Well, and I may have misunderstood you. When
15 you're in IAD, the officers give the statements. We
16 call them in. We go over point by point what we want
17 covered --

18 Q. Uh-huh.

19 A. -- you know, in case they leave out anything,
20 and they go out and type their own statements. So
21 it's -- it's a matter of -- to answer your question, the
22 officer does the statement.

23 Q. Okay. And when the officer does the statement,
24 does the internal -- did the internal affairs officer
25 remain in the room with them?

1 A. No.

2 Q. And does the -- did the internal affairs
3 officer come back after the statement is -- is typed, or
4 does the officer submit it in some other way?

5 A. No. The officer would say he's finished.

6 Q. Okay. And when the officer is finished typing
7 it up, is that the end of the interaction?

8 A. Yeah. Well, it's -- it's witnessed, notarized.

9 Q. Okay.

10 A. And I would usually review it because there are
11 certain points that you want covered, and you wanted to
12 make sure that those points were covered, and sometimes
13 they weren't all covered. There would be something left
14 out, one or two questions, and then he would go back and
15 then add those in and then -- and then we'd finalize the
16 statement.

17 Q. And when the officer -- so if you had a -- if
18 you had follow-up questions, if you said, "Hey,
19 something's missing here" --

20 A. Yeah.

21 Q. -- your practice was that the officer would
22 then leave again to make further edits and then come --
23 and then come back to you when finished?

24 A. Yes. Because before he gave his initial
25 statement, I list all the questions that I need answered

1 for the investigation, and he goes through those, and
2 he's supposed to cover those when he gives his
3 statement. If he forgets to do one or two of them, he
4 does go back and make the statement complete.

5 Q. So there wasn't necessarily a verbal interview.
6 It's listing the questions, not -- not like a dynamic
7 back and forth; is that fair?

8 A. Right.

9 Q. And was that the same way that when you were on
10 the other side of the investigations -- you know, in
11 1993 and before, was that the same process that you
12 experienced?

13 A. Yes.

14 Q. And -- right. So when you were investigated,
15 you typed up and decided exactly what was going to be in
16 your statement; is that right?

17 A. Yes. I did it myself.

18 Q. And when you were investigated, did you learn
19 of the questions for the first time at the interview, or
20 did you get them in advance?

21 A. No. At the interview.

22 Q. At the interview.

23 And was there any time limit on how long
24 you could take to type up your statement?

25 A. No.

1 Q. Okay. And am I correct that the department
2 sometimes used gag orders to tell officers not to talk
3 to each other?

4 A. Yes.

5 Q. And so if you get a gag order, what do you have
6 to do -- like what does that -- what does that tell you
7 you can't do?

8 A. You can't talk to the other officers that are
9 within that case. Or anybody, really. You can't talk
10 about the case.

11 Q. And before you got the gag order, you're free
12 to talk to other officers if you think a complaint might
13 be coming; is that fair?

14 A. Yeah.

15 Q. And on -- on the internal affairs complaints
16 that you were the subject of, how did you first get
17 notice that you had been complained against?

18 A. On what case was that?

19 Q. I guess, on -- well, did you learn about
20 complaints in different ways?

21 A. Yes.

22 Q. What were the different ways you learned of
23 complaints against you?

24 A. Well, a supervisor would come and tell you. A
25 lot of times, I know on my case, I had cases that

1 were -- I guess they had mistaken me and my brother
2 doing some cases.

3 Q. How funny. Do you have a brother who is also
4 in the El Paso Police Department?

5 A. Yes.

6 Q. That must have caused some confusion.

7 A. Yes.

8 Q. And so when you say a supervisor would come and
9 tell you, would that be one of your sergeants?

10 A. Yes.

11 Q. Okay. And were you separately notified of the
12 complaints by internal affairs?

13 A. Was I what?

14 Q. Did internal affairs also notify you separately
15 of the complaints against you?

16 A. Yes, I -- sometimes you get called by them.
17 Sometimes your sergeant would just say, "Go on over
18 there."

19 Q. Okay. Was it ever both? Like did a sergeant
20 ever tell you, "Hey, just so you know, there's been a
21 complaint against you," and then internal affairs
22 follows up to have you come take a statement?

23 A. I -- I don't remember -- really remember.

24 Q. Okay. And did you receive training on how to
25 take a witness statement?

1 MR. JIM DARNELL: Are you talking about
2 internal affairs investigations, or are we back to CAP?

3 Q. (BY MR. HILKE) I'm back to CAP now. So I want
4 to move away from internal affairs now and --

5 A. Okay.

6 Q. -- talk about your practice as a detective at
7 your time at CAP.

8 Did you receive training in how to take
9 witness statements?

10 A. No. I basically already knew how.

11 Q. Okay. And in taking a witness statement, would
12 you agree one of the goals is to -- well, strike that.

13 Is it correct that one of the goals in
14 taking a witness statement is to get information you can
15 use to test what other witnesses tell you?

16 A. I don't know if that's the goal. You just take
17 a witness statement as to what a person knows. And you
18 would compare it against other witness statements, and
19 everything, but, you know, as to what everybody knew --
20 knew, and you would continue your investigation from
21 there, but the purpose of the --

22 Q. Right.

23 A. No.

24 Q. So when you take a statement, you're aware that
25 you may be comparing what this witness told you against

1 what another witness told you; is that fair?

2 A. I -- I -- I guess you could use that. I never
3 really thought about it.

4 Q. Well, you discussed that, you know, at the
5 point of confession, you're looking for corroborating
6 details, right?

7 A. Right.

8 Q. And one source of corroboration would be what
9 other witnesses said about the crime; is that fair?

10 A. Yes.

11 Q. And so -- and you also talked earlier that it's
12 important to be thorough when -- when investigating
13 crimes; is that right?

14 A. Yes.

15 Q. So in taking a statement, was it your practice
16 to get -- to try to get specific details -- to get
17 enough specific details that it could be used for
18 corroboration later on?

19 A. If it was my case. Because when -- a lot of
20 times when you're on cases, you're only in on certain
21 parts of it, like I was on this case. And -- and if it
22 was a case that I had, that's basically true. I mean,
23 if it's something significant, you'd want it addressed.
24 But witnesses don't always give the same story, even
25 though they both saw the same thing, so you have to take

1 that into consideration. I mean, if it was something
2 significant, yeah, you would want to address that.

3 Q. Right. There -- there could be innocent
4 differences because people just remember a crime
5 differently; is that fair?

6 A. Yes.

7 Q. But you don't always know at the beginning of
8 an investigation what details will be significant,
9 right?

10 A. You know, maybe sometimes, yes.

11 Q. Yeah. And so without suggesting that every
12 little inconsistency shows that someone is lying, or
13 something like that, would you agree that it's important
14 to take thorough details from witnesses so their
15 statements can be used for corroboration?

16 A. Yeah. Yeah, you would want them corroborated.

17 Q. Yeah.

18 And in taking a statement, you're always
19 seeking the truth, right?

20 A. Yes.

21 Q. And so when you're taking a statement, you may
22 have some ideas about who the suspect is already; is
23 that fair?

24 A. Yeah, you -- you have suspects.

25 Q. But whether what a witness says points towards

1 a suspect or away from a suspect, you want to take it
2 down thoroughly all the same; is that right?

3 A. Yes.

4 Q. So do you recall in your career at crimes
5 against persons receiving evaluations of your
6 performance as a detective?

7 A. Yeah, every year.

8 Q. And -- and one of the -- some of the feedback
9 on your evaluations at crimes against persons was that
10 you needed to improve at interviews and interrogations;
11 is that right?

12 A. I don't even remember.

13 Q. I'm going to -- I'm going to show you an
14 exhibit --

15 A. Because that's always a goal, but I don't
16 remember specific evaluations and what they said.

17 Q. That's -- I'm just pulling up an exhibit now.
18 Okay. I'm going to share this in just a second. This
19 will be marked Exhibit Number 2.

20 (Exhibit 02 marked.)

21 Q. And so I'm going to share it now. So this is
22 Exhibit 2. This is at City 8865, and I'm going to zoom
23 in a little bit up here.

24 A. Okay.

25 Q. So do you recognize this as a -- do you see

1 your name in the upper left under "Employee Name"?

2 A. Uh-huh.

3 Q. And do you recognize this as one of your
4 evaluations?

5 A. (No verbal response.)

6 Q. And I'll scroll down in a minute, but is -- is
7 this the form that was used to give evaluations when you
8 were in crimes against persons?

9 A. Yeah, it is.

10 Q. So I'm going to scroll down to Section E. Do
11 you see in Section E where it says -- the goals are
12 "improve interview/interrogation skills"?

13 A. Yes.

14 Q. And then at the very bottom, this is your
15 signature on the report; is that right?

16 A. That is mine, yes.

17 Q. I'm going to stop sharing this now, and I'm
18 actually going to pull up a third exhibit now. So this
19 is Exhibit Number 3, City 8907.

20 (Exhibit 03 marked)

21 Q. Starting at 8907, this is a three-page
22 document. So up at the top, this is your name, Earl
23 Arbogast, again in the upper left; is that right?

24 A. Yes.

25 Q. And then we've got your -- oops. Pardon me.

1 We've got your signature in the bottom
2 right here; is that right?

3 A. That is correct.

4 Q. And I'm going to scroll down to the third page
5 of this document, down to Section E. And do you see
6 where it says, "Detective Arbogast must continue
7 improving in the area of interrogation"?

8 A. Yes, I do.

9 Q. Okay. I am going to stop sharing this document
10 now.

11 What was the reason that your evaluations
12 at crimes against person -- persons indicated you needed
13 to improve in interrogations?

14 A. I don't know. It was a continuing goal, I
15 guess, but I -- I don't know what -- what went into
16 that. I -- I didn't -- that was at the sergeant.

17 Q. Well, when you got -- when you were evaluated,
18 did you discuss your evaluations with your sergeants?

19 A. Yes.

20 Q. Did they -- did they tell you anything about
21 why they wanted you to improve in interrogations?

22 A. No, not really. They just basically had you
23 sign it.

24 Q. Uh-huh.

25 Were you aware of any deficiencies in your

1 interrogation skills at crimes against persons?

2 A. No.

3 Q. Were you aware that Detective Marquez
4 received -- was -- well, strike that.

5 When you were at crimes against persons,
6 was Detective Marquez considered a good interrogator?

7 A. Yes.

8 Q. And are you aware that Detective Marquez was
9 told that he should train other detectives on how to
10 conduct effective interrogations?

11 A. No, I wasn't aware of that.

12 Q. What was your understanding of what made
13 Detective Marquez good at interrogations when you worked
14 with him with crimes against persons?

15 A. What made him what?

16 Q. Good at interrogations.

17 A. I don't know. I don't think I ever sat in on
18 an interview with him, that I can remember.

19 Q. Was he known to get a lot of confessions?

20 A. Yes.

21 Q. Did you get a lot of confessions?

22 A. Yes.

23 Q. So you got a lot of confessions when you were
24 at crimes against persons.

25 A. Yes.

1 Q. But nevertheless, your feedback was that you
2 needed to improve your interrogations; is that right?

3 A. Yeah. It surprises me, but yes.

4 Q. Do you have any idea why they would tell you
5 that you needed to get better at interrogations if you
6 were --

7 A. No. I never needed help --

8 Q. -- good at -- you were getting a lot of
9 confessions?

10 A. -- on -- yeah. I don't know why.

11 Q. Do you recall being -- receiving feedback that
12 you needed to improve in anything other than interviews
13 and interrogations as a detective as -- at CAP?

14 A. No. I -- I was assigned cases, and I
15 investigated them, and nobody had ever told me anything.

16 Q. Okay. So if your evaluations show that
17 interviews and interrogations was the main thing you
18 were told to improve on, you wouldn't have any idea of
19 why that was; is that right?

20 A. No.

21 Q. Have you ever used physical force against a
22 suspect in a police station?

23 A. In -- like in -- like in patrol, if he wasn't
24 cooperating or something like that?

25 Q. Yeah, like on -- on patrol, to start.

1 A. Yeah. I mean, you use physical force all the
2 time in patrol, you know, with suspects, yeah. Yeah,
3 you know, not cooperating with you or they get physical.

4 Q. All right. And that was something that
5 occurred while you were in police stations after you had
6 taken them to the station; is that right?

7 A. Well, it happens on the scene. It happens at
8 the police station less, but it happens at the police
9 station a lot, too.

10 Q. Okay. And in patrol, have you witnessed other
11 officers use force against suspects in a police station?

12 A. Yeah. Sometimes it's necessary, yeah. I have
13 seen it.

14 Q. Yeah.

15 And are you trained on excessive force as a
16 police officer?

17 A. Excessive force?

18 Q. Yes.

19 A. No. You don't -- I mean, you're trained not to
20 use excessive force.

21 Q. Yeah, that's what I mean. You were trained on
22 how to use the appropriate amount of force against
23 suspects; is that right?

24 A. Yes.

25 Q. And what was your understanding of how much

1 **force is excessive force?**

2 MR. JIM DARNELL: At what point in time are
3 you referring to? Because that policy has changed a
4 number of times over the years.

5 MR. HILKE: Sure.

6 **Q. (BY MR. HILKE) Let's -- let's start with when**
7 **you were in patrol before you joined CAP. What was your**
8 **understanding when you were on patrol of how much force**
9 **was excessive force?**

10 A. Well, if somebody needed -- was being arrested
11 and he resisted, you did everything you could to make
12 sure that you place that person in handcuffs.

13 **Q. Uh-huh.**

14 A. I mean, you didn't shoot them. You just
15 wrestled with them, got his arms behind him to put the
16 handcuffs on.

17 **Q. Yeah.**

18 **So how would you know -- how would you know**
19 **if you were using excessive force?**

20 A. You use -- I -- I don't know how you -- how I
21 would define that. I guess you'd be using excessive
22 force if you had handcuffs on the guy and then you broke
23 his arm.

24 **Q. Sure. So if -- if you're beating someone after**
25 **they've already been subdued, that would be excessive**

1 force.

2 A. Yes.

3 Q. And if you -- if you shot someone just because
4 they were resisting, that would be excessive force.

5 A. Yes.

6 Q. And can you think of any other standard that
7 you had when you were in patrol to -- to set the limits
8 of excessive force?

9 A. No. We were trained to use the force
10 necessary. There -- there's also a hierarchy that we're
11 trained on --

12 Q. Uh-huh.

13 A. -- on when to use different types of force, and
14 it's basically always one higher than the person is
15 using.

16 Q. Okay. So the force should be proportional to
17 the force that the person is using against the officers;
18 is that right?

19 A. Yes.

20 Q. And did you ever witness an officer use
21 excessive force in patrol?

22 A. No.

23 Q. So let's --

24 A. I've seen them use force, but not excessive
25 force.

1 Q. Yeah.

2 When you were in patrol, were you ever
3 aware of any officer being disciplined for using
4 excessive force?

5 A. That was disciplined?

6 Q. Yes, sir.

7 A. I don't believe on my shift there was ever
8 anybody. I know that the officers were accused of
9 excessive force, but I don't know what happened with
10 those cases on the other shifts, because you would hear
11 about them, but I've never seen it myself.

12 Q. Okay. So you knew that there were complaints,
13 but you didn't have any knowledge about whether those
14 complaints were ever sustained; is that fair?

15 A. No.

16 Q. Okay. Let me fast-forward to -- I guess it
17 would be your second time in crimes against persons,
18 the -- the portion that includes 1993. Had your
19 understanding of what constituted excessive force
20 changed at all at that time from when you were on
21 patrol?

22 A. No. The hierarchy was the -- was about the
23 same then.

24 Q. And --

25 A. Everything was about the same.

1 Q. Yeah.

2 Did you ever use excessive force on anyone
3 during that period at crimes against persons?

4 A. No.

5 Q. Did you ever witness another officer use -- or
6 detective, any police personnel, use excessive force
7 during that time?

8 A. No.

9 Q. Did you ever use force against a suspect in a
10 police station -- and I mean not necessarily excessive
11 force. Just force -- during that period of -- in crimes
12 against persons?

13 A. As a detective?

14 Q. Yes, sir.

15 A. I -- I can't think of any right now.

16 Q. Okay. Did you ever witness another officer use
17 force against -- against -- inside a police station
18 during that period at crimes against persons?

19 A. I -- I can't think of any.

20 Q. Yeah. And as a detective during that time, did
21 you ever hear of another detective being accused of
22 using physical force against a suspect, yeah, during
23 that time you were at CAP?

24 A. CAP, excessive force, I don't recall any.

25 Q. And so is it fair to say, then, that you can't

1 recall ever hearing that -- well, strike that.

2 Can you recall ever hearing that a CAP
3 detective was disciplined for using excessive force?

4 A. I can't. There may have been instances. If
5 there was something specific, I might remember, but I
6 can't remember of any.

7 Q. Have you ever testified falsely under oath?

8 A. No.

9 Q. And have you ever witnessed another officer
10 testify falsely under oath?

11 A. No.

12 Q. Have you ever heard of -- have you ever heard
13 of another El Paso officer testifying falsely under
14 oath?

15 A. No.

16 Q. Have you ever heard of an officer being
17 disciplined in El Paso Police Department for testifying
18 falsely under oath?

19 A. No.

20 Q. Do you have -- strike that.

21 Did you have a duty to report any
22 misconduct you witnessed by a fellow police officer?

23 A. Yes.

24 Q. Did you ever report another police officer for
25 committing misconduct?

1 A. No.

2 Q. Did you ever witness another police officer
3 commit misconduct?

4 A. No.

5 Q. I want to ask you a question about witnessing
6 statements. You mentioned before that as an officer,
7 you would sometimes be called on to sign as a witness to
8 a statement; is that correct?

9 A. That's true.

10 Q. And is the purpose of witnessing a statement to
11 confirm that the person making the statement has
12 understood the statement they made?

13 A. Yes. It was at times when we didn't have a
14 notary.

15 Q. Uh-huh. And by being a witness to the
16 statement, did that also serve to identify the officers
17 who could later testify in court and confirm, yes, this
18 person really did say this or impeach them if they
19 denied it?

20 A. No. The purpose of the -- the witnessing
21 was -- I -- I can only tell you what I do is -- is I --
22 I have -- when people come in and witness a statement,
23 then I would ask the -- the guy if the statement was
24 true and correct, and he would say "yes."

25 And then I would say, "Has any force been

1 used on you or promised you -- or -- or have you been
2 promised or anything?"

3 And he would go "no." And then that would
4 be in front of the witnesses, and they would sign it, so
5 that way, if he ever said anything else, I had those
6 witnesses.

7 Q. Right. And so in your practice, it wasn't
8 enough for the witnesses to just show up as the wit- --
9 as the person giving the statement signed it. You also
10 needed the person making the statement to confirm that
11 they understood everything in the statement; is that
12 right?

13 A. That he was giving it voluntarily.

14 Q. Well, that he was giving it voluntarily, but
15 was it your practice, also, to have the person giving
16 the statement confirm that they understood what was in
17 the statement?

18 A. Yes.

19 Q. And also that no force had been used against
20 them.

21 A. Yes.

22 Q. And -- right. So then if the witness later
23 denies that they made that statement, those witnesses
24 can show up and say, "No. No. No. He confirmed that
25 he understood everything that was in there"; is that

1 right?

2 A. Yes.

3 Q. Okay. The police department's policy was that
4 there were protections given to juveniles in
5 investigations; is that right?

6 A. Confessions from juveniles, yes.

7 Q. And --

8 MR. JIM DARNELL: Wally, if you're starting
9 a different area, can we take a break?

10 MR. HILKE: Yes, sir. Let's go off the
11 record.

12 THE VIDEO TECHNICIAN: All right. We're
13 off the record. The time is 11:27.

14 (Break taken.)

15 THE VIDEO TECHNICIAN: We are back on the
16 record for the deposition of Earl Arbogast being
17 conducted by videoconference. My name is Sydney Little.
18 Today is June 30th, 2022, and the time is 11:39.

19 Q. (BY MR. HILKE) Sorry to keep you waiting. I
20 had a -- I had a question. It just vanished from my
21 mind as I'm sitting here. Give me one moment.

22 A. Okay.

23 MR. JIM DARNELL: Are you okay with that?

24 THE WITNESS: Yeah. It might be hard,
25 yeah.

1 MR. HILKE: Can you-all --

2 THE WITNESS: I'll try it.

3 Q. (BY MR. HILKE) When -- we were talking a
4 little bit earlier about your practices when you took
5 statements that were witnessed; is that right?

6 A. You know what? I can't -- I can't hear.

7 MR. JIM DARNELL: Hold on. We had
8 turned the air -- wait.

9 MR. HILKE: That's okay. Let's -- let's go
10 off the record for a sec.

11 MR. JIM DARNELL: We had turned the air
12 conditioner on because --

13 THE VIDEO TECHNICIAN: All right. We're
14 off the record at 11:40.

15 (Break taken.)

16 THE VIDEO TECHNICIAN: We're back on the
17 record for the deposition of Earl Arbogast being
18 conducted by videoconference. My name is Sydney Little.
19 Today is June 30th, 2022, and the time is 11:41.

20 Q. (BY MR. HILKE) Okay. So you talked earlier
21 about your practice when taking statements that were
22 witnessed; is that right?

23 A. Yes.

24 Q. And when you took statements that were
25 witnessed, would you have any portion of the statement

1 read in front of the witnesses?

2 A. No, not -- not on a witness statement, I
3 wouldn't.

4 Q. Okay. What about on -- what if it were an
5 incriminating statement of a suspect? In that case,
6 would you have it read out loud?

7 A. I would have him read to me, maybe, a paragraph
8 or a few lines to make sure that I knew that he
9 understood and could read, but I wouldn't do it in front
10 of anybody.

11 Q. Okay. So when the witnesses come up -- come to
12 do -- strike that.

13 When the witnesses come to witness a
14 statement, they just hear the person making the
15 statement saying -- you know, confirming that it is
16 their statement; is that right?

17 A. Yes.

18 Q. But other than them say- -- other than the
19 witness saying so, those witnesses aren't actually
20 confirming in any way that the witness understands
21 what's in there, right?

22 A. Other than -- no. Like I said, like other than
23 me asking if it's -- if it's his true and correct
24 statement, that would be the only thing.

25 Q. And as a detective, did you have to be extra

1 careful with juvenile suspects?

2 A. Juvenile suspects, yeah. It's a whole
3 different animal. It's -- it's totally different.

4 Q. And you understood that juveniles were more
5 suggestible than adults; is that right?

6 A. I never said that. That they were more
7 suggestible? No, I -- I don't think I've ever said
8 that.

9 Q. Was that your understanding?

10 A. I -- yeah, I -- I guess in -- again, on a
11 case-by-case basis, you know, depending on the juvenile.
12 Some were more advanced than others and I -- you know,
13 it could happen, but...

14 Q. Yeah. Was -- was the general fact that
15 juveniles are more vulnerable than adults part of the
16 reason you had to be extra careful with them?

17 A. Yeah. There's extra precautions taken in for
18 them for that reason.

19 Q. And did juveniles have a right to have a parent
20 present when they were questioned?

21 A. No.

22 Q. Okay. Were you aware of any obligations you
23 had when questioning juveniles to engage those
24 juveniles' parents?

25 A. Yes. You tried to -- you tried to notify them.

1 Q. Okay.

2 A. There's -- there's a form on there that we used
3 to do to notify them and what time.

4 Q. Did that form seek permission from the parents?

5 A. For suspects, no.

6 Q. Not for suspects. So it was okay to
7 interrogate a juvenile suspect without a parents'
8 permission.

9 A. No.

10 Q. I'm sorry. Just so I understand, did you --
11 did you seek a parent's permission or not when
12 interrogating a juvenile suspect?

13 A. Sometimes you -- you -- you had a parent's
14 permission to do it because you would arrest them near a
15 parent. If there wasn't a parent nearby, you would try
16 to contact that parent. In this case, the parents were
17 present.

18 Q. Was it important to document the permission
19 from the parents?

20 A. Yes.

21 Q. And that's what the form was for?

22 A. I forget what all's on the form.

23 Q. Okay. Did -- okay. Can you -- is it
24 appropriate to interrogate a juvenile in the same way
25 you would interrogate an adult?

1 A. Again, case-by-case basis as -- depends on his
2 personality and, you know, what the case was.

3 Q. Are there situations in which it would not be
4 appropriate to interrogate a juvenile in the same way as
5 an adult?

6 A. I'm not sure what you're asking. I mean, you
7 wouldn't be using -- I mean, you wouldn't beat him up,
8 but you wouldn't beat up an adult, either. Is that what
9 you're asking?

10 Q. Yeah. I'm asking if there's -- I'm asking if
11 there are sit- -- yeah. I'm asking if -- well, so we
12 talked earlier about your training in interrogation,
13 right?

14 A. Yes.

15 Q. And we talked about different techniques you
16 might or might not use in an interrogation; is that
17 right?

18 A. Yes.

19 Q. And what I'm wondering is, in general, is it
20 necessary to use different techniques with juveniles
21 than you would with adults?

22 A. I mean, for me, no. I would do it the same.

23 Q. And in talking in 1993, in 1993, were there
24 steps you had to take before questioning a juvenile
25 suspect about a crime?

1 A. Yes.

2 Q. Did you have to take them to a youth officer to
3 receive warnings?

4 A. Yes.

5 Q. Did you also have to take them to a magistrate
6 judge for their warnings?

7 A. Yes.

8 Q. And you were supposed to do all those things
9 before questioning a juvenile about the crime; is that
10 right?

11 A. That's correct.

12 Q. And -- and you don't want to -- and with a
13 juvenile suspect, you don't want them talking about the
14 case until after those steps have been taken; is that
15 right?

16 A. That is correct.

17 Q. Because you want to make sure that they get
18 those warnings before they implicate themselves; is that
19 right?

20 A. Yeah. He needs to have certain precautions
21 made, and you do those before you talk to him.

22 Q. Yeah. And so are -- are you familiar with a
23 policy that interrogation of juveniles should be
24 conducted by youth services police officers?

25 A. I don't think there was a separate one for

1 youth -- a youth services officer. I think there's a
2 form where they help us, but it's -- it's for everybody.

3 Q. Yeah. I'm going to share an exhibit with you,
4 so it'll take me a minute again.

5 Okay. I'm now sharing what I'll mark as
6 Exhibit Number 4. This is starting at Defendant
7 City 21495.

8 (Exhibit 04 marked.)

9 Q. Just to start at the top of the document, do
10 you see at the top where it says "Chapter Seven,
11 Juvenile"?

12 A. I see it.

13 Q. And is this familiar to you as a -- I'm sorry.
14 Strike that.

15 Is this what the El Paso Police
16 Department's policies looked like?

17 A. Yeah. It looks like it came from the -- the
18 policies.

19 Q. Okay. I'm going to scroll down some pages in
20 this document. Whoops. Let's see.

21 Okay. So I've scrolled down to what's page
22 8 of this document. That's at City 21502. And give me
23 just one second to find this, please.

24 Okay. So do you see the section reading
25 "7.02.009, Interrogation"?

1 A. Yes.

2 Q. I want to point you to the last sentence. Do
3 you see where it says, "When possible, interrogation of
4 a juvenile suspect is conducted by youth services"?

5 A. Yes.

6 Q. Did you follow that policy?

7 A. In this case? No. Detective Marquez
8 interrogated.

9 Q. Do you recall --

10 A. I think -- you know what? I -- I can't really
11 answer because I know Detective Marquez took the
12 statement. I don't know if Charlie Ortega was there,
13 and it was under his guidance. I wasn't back there, so
14 I don't know what the circumstances were.

15 Q. So are you saying that it's possible that
16 Carlos Ortega actually conducted the interrogation of
17 Daniel Villegas?

18 A. Well, I --

19 MR. ALMANZAN: Objection, calls for
20 speculation and no foundation. This witness does not
21 have personal knowledge of that. He just testified to
22 that effect.

23 Q. (BY MR. HILKE) Go ahead.

24 A. Go ahead.

25 Q. Okay. You can answer.

1 A. Shoot, I forget what it was.

2 **Q. Would you like me to repeat the question?**

3 A. Yeah.

4 MR. HILKE: And, Andy, I -- I -- your
5 foun- -- your foundation and speculation objections
6 are --

7 THE WITNESS: Oh, yeah.

8 MR. HILKE: -- well taken, but I'll ask you
9 to avoid the speaking follow-on, if that's all right,
10 for this deposition.

11 MR. ALMANZAN: And if that's all right with
12 this deposition, I'll ask you to ask more appropriate
13 questions. I will object as I deem appropriate.

14 MR. HILKE: Okay. We'll -- we'll have an
15 issue we may need to address if speaking objections
16 continue and I -- your objection is certainly noted for
17 the record.

18 My question to the witness is:

19 **Q. (BY MR. HILKE) Are you saying that, to your**
20 **knowledge, it's possible that Carlos Ortega conducted**
21 **the interrogation of Daniel Villegas?**

22 MR. ALMANZAN: Object- --

23 A. I --

24 MR. ALMANZAN: Same objection as to
25 speculation. Same objection as to lack of foundation.

1 Q. (BY MR. HILKE) Go ahead.

2 A. That he conducted it? I don't know.

3 Q. Okay. Go ahead.

4 A. No. That's all.

5 Q. So sitting here today, you don't know who
6 actually conducted Daniel Villegas's interrogation; is
7 that right?

8 A. No. I wasn't back there.

9 Q. Okay. Okay. Would you agree that according to
10 this policy of the El Paso Police Department, Carlos
11 Ortega should have been the one conducting the
12 interrogation?

13 MR. ALMANZAN: Objection, calls for
14 speculation and lacks foundation.

15 MR. JIM DARNELL: Same objection.

16 THE WITNESS: Answer?

17 MR. JIM DARNELL: Go ahead.

18 A. Yeah. By the policy, it seems so.

19 Q. (BY MR. HILKE) Okay. Did you conduct -- did
20 you conduct other investigations involving juvenile
21 suspects at CAP?

22 A. Yes.

23 Q. And in those investigations, did you and -- in
24 those investigations, did youth services officers
25 interrogate juvenile suspects?

1 A. No.

2 Q. Are you familiar of any case where youth
3 services officers interrogated juvenile suspects?

4 A. No. For CAP, no.

5 Q. Do you have any explanation for the failure to
6 follow this policy?

7 MR. JIM DARNELL: Object to form.

8 THE WITNESS: Huh?

9 MR. JIM DARNELL: Go ahead.

10 A. It -- that was just some- -- that was the --
11 the practice that we had. And when we picked up a
12 juvenile, we did what the pro- -- protocol had, as far
13 as taking him before a judge and everything. But once
14 he was taken to the judge and a statement was taken, it
15 was just always us that took it.

16 Q. (BY MR. HILKE) And after a juvenile suspect
17 was picked up, was there a location where they had to
18 first be taken?

19 A. Yes.

20 Q. What was that location?

21 A. There were about four in El Paso, and they
22 were, I think, accepted juvenile holding areas, and you
23 could take a statement from any one of those areas.
24 There was one on the west side. You had the two on
25 Delta and I -- I can't remember where the other one is.

1 I'm not sure where the one other is.

2 Q. And when you say that there were two on Delta,
3 was one of them the juvenile investigative services
4 office?

5 A. Yes. The juvenile probation department and
6 where the statement was actually taken are two different
7 places.

8 Q. Okay. And --

9 A. You could take a statement at either place.

10 Q. Okay. And the juvenile probation department,
11 that's also, essentially, a juvenile jail; is that
12 right?

13 A. That's where they're --

14 MR. ALMANZAN: Objection --

15 A. -- housed, yes. That's where they're housed,
16 yes.

17 Q. (BY MR. HILKE) So I'm going to scroll down to
18 the next page in this Exhibit Number 4. That's going to
19 be at City 21503. And I want to show you, looking at
20 where it is, bullet point A.

21 Do you see where it reads, "When an officer
22 takes a juvenile into custody and intends to take a
23 confession, the officer must, without unnecessary delay
24 and without first taking the child elsewhere, take the
25 child to the juvenile probation department. The intake

1 officer from JPD will review the officer's reports to
2 determine probable cause"? Do you see that?

3 A. Yes.

4 Q. So this policy only lists one location where a
5 juvenile suspect may be taken; is that right?

6 A. That's -- that's where he's taken initially,
7 where he's housed, but what I'm talking about is where
8 you can take a juvenile to do the paperwork or a
9 statement. But this is where -- and at that juvenile
10 probation department, they had an area where you could
11 take a statement, also.

12 Q. Uh-huh.

13 A. So I'm kind of confused as -- as to what you
14 mean. I mean, there -- there -- there were four areas
15 that we could take a juvenile to to process him before
16 taking him to the juvenile probation officer.

17 Q. So your understanding was that any of the four
18 places you mentioned would be appropriate to take a
19 juvenile suspect after they were picked up; is that
20 right?

21 A. Yes, to do the paperwork before he went to the
22 juvenile probation department officer.

23 Q. Okay. And so your understanding of the
24 practice was not that a juvenile suspect had to be first
25 taken to juvenile probation department without being

1 taken elsewhere; is that fair?

2 A. Well, there -- there was no delay. The
3 juvenile probation department also -- officer required
4 paperwork.

5 Q. Okay.

6 A. So it wasn't an unnecessary delay. You had
7 to -- you had to first get the paperwork to present to
8 that officer at the juvenile probation department, so
9 you wouldn't take him straight from where you arrested
10 him to the juvenile probation officer because they
11 wouldn't accept him. You had to have certain paperwork
12 first.

13 Q. Right. Right.

14 And so -- so just so I'm under- -- your
15 understanding was that it was okay to take the juvenile
16 first to any of those four locations and then take them
17 to the juvenile probation department.

18 A. Yes. You had to. You had to do the paperwork.

19 Q. And was that the case even if the paperwork
20 could have been completed before taking them to the
21 juvenile probation department?

22 A. No. You can't.

23 Q. Okay. So if you were able to --

24 A. Many different forms over there that you had to
25 fill out.

1 Q. Okay. What were those forms?

2 A. Part of it's the confession form. And then you
3 would try -- I can tell you what I did. I would always
4 try to do a small supplement of the cases and type out a
5 report for the juvenile probation officer so he knew the
6 probable cause that we had. And with that statement and
7 maybe some statements from witnesses and the paperwork
8 that was required from the juvenile confession form,
9 that was taken over to the officer.

10 Q. Right. And for the confession form, no
11 confession can be taken until after they go to JPD and
12 after they go to the magistrate, right?

13 A. That's right.

14 Q. So there's no reason -- so what you're talking
15 about is a blank form; is that fair?

16 MR. JIM DARNELL: All you're talking about
17 is what? I'm sorry?

18 MR. HILKE: Yeah.

19 Q. (BY MR. HILKE) You had talked about, well, you
20 need to get confession paperwork before going to go --
21 before going to JPD, but you can't complete any of that
22 form until after JPD and after the magistrate; is that
23 right?

24 A. I'm not sure if I understand. You had to
25 complete it before you take them to the juvenile

1 probation department.

2 **Q. Your testimony is that a confession form had to**
3 **be completed before a juvenile was taken to the juvenile**
4 **probation department?**

5 A. I think we're crossing hairs. What I -- what
6 I'm saying is, is if you pick up a juvenile, you can't
7 take him to the juvenile probation department right off
8 the bat because you don't have the paperwork that he
9 required. You had to do certain paperwork and make sure
10 you had the probable cause in hand so that he can read
11 it, and then take him over to the juvenile probation
12 department.

13 **Q. I understand. Give me one second, please.**
14 **Okay.**

15 **And to your knowledge, was that practice**
16 **ever documented in the department's policy?**

17 A. I -- I'm not sure. I don't know. That -- that
18 was the policy as far as I understood it.

19 **Q. Okay.**

20 A. Well, not only that, I mean, I don't know if it
21 was written in there, but you could take a juvenile
22 straight, when being taken into custody, to the
23 probation department, but it's a useless step. He's not
24 going to -- he's not going to see you. He requires
25 certain paperwork, and that's just it. You can't get

1 around it.

2 Q. Okay. Did -- I want to put your attention on
3 bullet B here. Do you see where it says, "Once the
4 child has been transported to JPD, the intake officer
5 has ultimate control over the investigative function of
6 the case"?

7 A. Okay.

8 Q. And to your understanding of the department's
9 policy, is that intake officer -- is that the same one
10 who reviews your reports to determine probable cause?

11 A. Could you ask that again?

12 Q. Sure.

13 So do you see where it mentions that once a
14 juvenile goes to JPD, now it's --

15 A. Uh-huh.

16 Q. -- the intake officer with ultimate control
17 over the investigative function of the case?

18 A. Yes.

19 Q. That's the same intake officer who reviews the
20 reports to determine probable cause, right?

21 A. Yes.

22 Q. And then that officer gets to make the decision
23 about what further investigation, if any, occurs, right?

24 A. Well, yeah. Basically, it would -- it would
25 just continue. The investigation would continue, and

1 that's when we would take the child to the magistrate.

2 Q. In -- in -- in the case of Daniel Villegas,
3 were you with Daniel when he was brought to the intake
4 officer?

5 A. Yes.

6 Q. And did that intake officer find that there was
7 probable cause?

8 A. Yes.

9 Q. And did that intake officer make any decisions
10 about how the case would be investigated?

11 A. No.

12 Q. Okay. And another question -- I'm going to
13 stop sharing this document at this point.

14 After -- the process for juveniles is that
15 after they've seen the probation officer -- strike that.

16 The process for juveniles is, after they've
17 seen the intake officer and after they've seen the
18 magistrate, then you can question them about the case,
19 right?

20 A. Yes.

21 Q. And you can take a confession if they want to
22 give a confession, right?

23 A. Yes.

24 Q. And after the juvenile signs a confession --
25 strike that.

1 The juvenile actually signs a confession in
2 front of the magistrate, right?

3 A. Right. He's taken back before the magistrate,
4 and then he signs it.

5 Q. And then after the magistrate, the juvenile is
6 taken back to juvenile probation, right?

7 A. Yes. That's when he's taken to the probation
8 department.

9 Q. Okay. Great.

10 Was your training as a detective that --
11 strike that.

12 Does the phrase "Brady evidence" or "Brady
13 obligation" have any familiarity to you?

14 A. Could you -- I'm sorry. Can you say it one
15 more time?

16 Q. I can. "Brady evidence" or "Brady obligation."

17 MR. ALMANZAN: Objection, calls for
18 speculation, confusing, ambiguous.

19 THE WITNESS: What was the question?

20 Q. (BY MR. HILKE) I can ask again.

21 MR. JIM DARNELL: He's asking "Brady
22 obligations."

23 A. "Brady obligation"? I don't -- I don't know
24 what that is.

25 Q. (BY MR. HILKE) Okay. Is one of the

1 constitutional rights of criminal defendants that you
2 were trained on that criminal defendants have a right to
3 any evidence that could be used to prove their
4 innocence?

5 MR. ALMANZAN: Objection, calls for
6 speculation.

7 A. I would say yeah.

8 Q. (BY MR. HILKE) And was -- and does that -- and
9 is it fair to say that you understood that if you had
10 evidence that pointed to a suspect's innocence, that
11 evidence should be in your -- your police reports for
12 any investigation you conducted?

13 A. Yes.

14 Q. Okay. And would you ever -- as a detective,
15 did you ever choose to leave something out of your
16 police reports that tended to show a suspect's
17 innocence?

18 A. No.

19 Q. You always tried to include it; is that fair?

20 A. Yes.

21 Q. So I want to go back to asking about internal
22 affairs for a minute. You received multiple civilian
23 complaints as a member of the El Paso Police Department;
24 is that right?

25 A. Yeah, while I was in patrol.

1 Q. And you also received some internal complaints
2 that were initiated by someone within the department; is
3 that right?

4 A. Yes.

5 Q. And am I -- do you recall ever being suspended
6 as a result of a civilian complaint?

7 A. No.

8 Q. Okay. And so as far as you know, you were
9 never suspended based on a complaint that a civilian
10 brought against you; is that right?

11 A. No.

12 Q. Does receiving a suspension for damage to city
13 property, I think maybe -- like based on a lighter in a
14 car, sound familiar to you at all?

15 A. Yeah. Yeah.

16 Q. Okay.

17 A. I don't think we got a suspension. I think we
18 got a written reprimand on that one.

19 Q. So do you recall a civilian complaint against
20 you from March 1992?

21 A. Not -- do you have any details on it?

22 Q. Sure.

23 Do you recall a complainant named Rosario
24 Rodriguez?

25 A. I don't remember it by name.

1 Q. I'll go ahead and -- I'm going to share the --
2 some actual documents from it.

3 A. Okay.

4 Q. Give me one moment, please. Okay. We're going
5 to mark this Exhibit Number 5. This is at city 8- --
6 oh, I'm sorry. I'm going to share it now. I'm going to
7 share it, I'm going to mark it, and then I'm going to
8 zoom in.

9 This is Exhibit Number 5. This is at
10 City 8898.

11 (Exhibit 05 marked.)

12 Q. And I'm going to -- I'm going to go ahead and
13 zoom in now.

14 Is this document familiar to you as an --
15 as a personnel information report from the internal --

16 A. Yeah, I --

17 Q. -- affairs division?

18 A. Yes. I think I remember it.

19 Q. And this was dated April 7, 1992, at 2:25 p.m.;
20 is that right?

21 A. Yes.

22 Q. And the complainant listed here is Rosario
23 Rodriguez; is that right?

24 A. Yes.

25 Q. And the officers involved are Al Marquez and

1 you; is that right?

2 A. Yes.

3 Q. The bureau listed is "CIB." What is "CIB"?

4 A. Criminal investigations bureau.

5 Q. Was crimes against persons within the criminal
6 investigations bureau?

7 A. Yes.

8 Q. Okay. And I'm scrolling down in the document
9 now. But I guess, before we go to the document, does
10 seeing this refresh your memory of this complaint at
11 all?

12 A. Yeah, I seem to remember it.

13 Q. Yeah.

14 A. I remember the -- I remember the complaint. I
15 don't remember the details of it.

16 Q. Sure.

17 Did -- did you and Al Mar- -- Marquez come
18 to Rosario Rodriguez's house?

19 A. Yeah, we would have. I mean, it's documented.
20 I -- I don't really, you know, remember the -- the case.
21 I -- I -- I remember that there was a complaint lodged.

22 Q. Do you recall -- do you recall her complaining
23 that you and Al Marquez were rude and would not listen
24 to her?

25 A. From what I remember -- and if I can read it

1 all, I -- I thought that they were saying Al Marquez was
2 rude. I didn't know there was a complaint against me.

3 Q. I see. Let me scroll down a little bit here.

4 And just for -- you and Al Marquez were
5 investigating a murder; is that right?

6 A. Yeah. Yes.

7 Q. And you thought that her husband was the
8 murderer?

9 A. Yes.

10 Q. Did he, in fact, turn out to be the murderer?

11 A. You know what? I don't remember the -- the
12 case.

13 Q. Sitting here today, you don't know if he did or
14 he didn't?

15 A. No.

16 Q. That's fine. So --

17 A. Yeah.

18 Q. -- I think --

19 A. Yeah. It was -- I remember I was a witness in
20 the case, and I'm -- I'm reading it now --

21 Q. Uh-huh.

22 A. -- where she said Detective Marquez was rude to
23 her.

24 Q. Yeah.

25 So looking at just sort of the bottom of

1 the first page here, do you see the last full sentence
2 where it says, "Detective Marquez, who did all the
3 talking, was very rude to her, and Detective Arbogast
4 just stood there rolling his eyes in disbelief"?

5 A. Yes, I see it.

6 Q. I'm going to scroll down to the second page
7 now, and looking at -- or do you recall that -- did you
8 go to the husband's place of employment to question him?

9 A. I don't have details of the case. I --

10 Q. Okay.

11 A. I would have to see the case.

12 Q. Sure. Did --

13 A. I mean --

14 Q. Okay.

15 A. Yeah, we might have, but I -- I don't remember.

16 Q. Sure.

17 And looking at sort of the first full
18 sentence on this page, do you see, "Once there, the
19 detectives began to question him reference the murder
20 warrant in front of the other employees, embarrassing
21 him"? Do you see that part of the complaint?

22 A. Yes.

23 Q. Okay. So I actually want to scroll down to the
24 bottom. Starting where it says "complainant," do you
25 see where it says, "Complainant was advised that her

1 complaint would be documented and sent to the
2 detectives' supervisor, Lieutenant Saucedo. She was
3 further advised that no investigation would be conducted
4 by internal affairs, which she understood, and signed
5 the information document waiver attached"? Is that
6 right?

7 A. Yeah. It's documented that way, yes.

8 Q. Yeah.

9 Do you know why this woman was told that
10 her complaint wouldn't be investigated?

11 MR. JIM DARNELL: Object, calls for
12 speculation.

13 Answer it --

14 THE WITNESS: Okay.

15 MR. JIM DARNELL: -- if you can.

16 A. What was the question?

17 Q. (BY MR. HILKE) Yeah. The question was just if
18 you -- if you know why this woman was told that her
19 complaint would not be investigated.

20 A. No, I don't.

21 Q. Okay. When you worked in internal affairs, did
22 you sometimes close out civilian complaints without
23 investigating them?

24 A. Dang it. Can you repeat it?

25 Q. Yeah.

1 When you worked in internal affairs, did
2 you sometimes close out civilian complaints without
3 investigating them?

4 A. Not without investigating them, no.

5 Q. Okay. Was it your understanding that all
6 complaints should be investigated?

7 A. Well, I would get a caseload, so everything I
8 got was investigated. I don't know if there was
9 determination on higher-ups that maybe some complaints
10 were turned away. I don't know anything about that. I
11 just know that I got a caseload, and I had to
12 investigate those.

13 Q. I understand. So you didn't know when you
14 worked in internal affairs whether some complaints were
15 screened out before they ever reached the investigators.

16 A. No. All -- all I know is my caseload.

17 Q. Sure. Okay. I'm going to stop sharing this
18 document now.

19 And I'm going to -- do you recall being
20 accused of using excessive force against an Armando
21 Herrera in 1978?

22 A. No. That would have been when I was in patrol.

23 Q. Yeah.

24 A. I don't remember.

25 Q. Do you remember a suspect alleging that you had

1 deliberately tripped him and hit him in the testicles
2 with a baton?

3 A. No, I don't remember.

4 Q. Okay. Do you remember a suspect alleging that
5 you pulled him by his hair into a car?

6 A. By his what?

7 Q. Hair.

8 A. No, I don't.

9 Q. Have you ever pulled a suspect by his hair into
10 a car?

11 A. No.

12 Q. Okay. So I'm going to share another exhibit
13 with you now.

14 Okay. We will mark this as Exhibit
15 Number 6, and this is at Bates -- give me a second --
16 City 55632.

17 (Exhibit 06 marked.)

18 Q. I'm going to zoom in on the top for a minute.
19 This is a complaint all the way back from November 29,
20 1978; is that right?

21 A. Yes.

22 Q. And the complainant is named Armando Herrera?

23 A. Yes.

24 Q. And you are listed as the second employee
25 involved here; is that right?

1 A. Yes.

2 Q. And your badge number is 765; is that right?

3 A. Yes.

4 Q. Was that your badge number the whole time you
5 were at El Paso Police?

6 A. Yes, except they didn't go by badge numbers the
7 last few years. They went by an ID number, and it
8 changed.

9 Q. Okay. I'm actually going to scroll down in
10 this document a fair ways to what is actually page 20.
11 Is that what I want? Sorry. Let me find the page I
12 want here, please. I'm going to stop sharing for one
13 second. I'm going to find the page I want. I wrote it
14 down wrong. That looks right. Okay. Thanks for your
15 patience.

16 I'm sharing this document again. This is
17 PDF page 54 of this exhibit. It's at City 55685, yeah.
18 Do you see here a statement by Officer E.W. Arbogast?

19 A. Uh-huh.

20 Q. And this was from December 18, 1978, at 9:45
21 a.m.?

22 A. Yes.

23 Q. And this would have been a statement that you
24 typed out; is that right?

25 A. Yes.

1 Q. I'm scrolling down a little bit. Do you see
2 on -- I'm looking sort of at the middle of the page
3 here. Do you see -- and I'm highlighting the section
4 now, actually.

5 MR. JIM DARNELL: Could you let him --

6 Q. (BY MR. HILKE) Do you see --

7 MR. JIM DARNELL: Could you let him read
8 the document?

9 MR. HILKE: You know, I actually only want
10 to ask about a couple of sentences here. I --

11 MR. JIM DARNELL: But he probably needs to
12 read it to put it into context. Not out loud. Just to
13 himself.

14 MR. HILKE: Yeah, that's fine.

15 Q. (BY MR. HILKE) Would you like a minute to read
16 the document through?

17 A. Yes, I'll review it.

18 Q. I'll let you go ahead. Let me know when you
19 want to scroll down.

20 A. Okay. Thank you.

21 Okay. Could you scroll down, please?

22 Q. Yes, sure. And there's not actually much else
23 you can read here.

24 A. Okay. I'm through reading that.

25 Q. Okay. I want to scroll back up a little bit.

1 So you've had a chance to read the statement?

2 A. (No verbal response.)

3 Q. Sir, were you able to read the statement during
4 that time?

5 A. (No verbal response.)

6 Q. I'm sorry. Sir, can you hear me?

7 A. Yes, I can hear you.

8 Q. Oh, yeah.

9 Did you have an opportunity to review the
10 statement?

11 A. To give a statement? Yeah. This is --

12 MR. JIM DARNELL: To read it.

13 A. Oh, yes, I did.

14 Q. (BY MR. HILKE) Okay. So I'm now going to
15 point you to -- do you see this sentence where it
16 reads --

17 A. Yes.

18 Q. -- "When we tried to get the handcuffs on, the
19 subject started to swing his fists, and we did the same
20 thing, while trying to get the subject turned around so
21 we could get the handcuffs on"? Do you see where it
22 says that?

23 A. Yes.

24 Q. And then scrolling down a little bit, do you
25 see where it says, "I feel we only used reasonable force

1 and nothing excessive, other than to get the subject
2 under control."

3 A. Yes.

4 Q. Do you -- okay.

5 So in reviewing the statement, did you
6 actually describe whether or not you struck the suspect
7 with your fists?

8 A. I don't remember. I -- I probably did because
9 it's in my statement. I would -- I would have swung at
10 him. The hierarchy that I had told you about earlier,
11 we could have actually gone one higher, but we didn't.

12 Q. Right.

13 Well, I mean, your statement says that you
14 swung at the suspect --

15 A. Yes.

16 Q. -- is that right?

17 A. Yes.

18 Q. But -- but does it say --

19 A. If he swung at me, I would have swung back at
20 him.

21 Q. Right, but does --

22 A. Yeah.

23 Q. -- it say anywhere if you actually made contact
24 and hit him as you swung at him?

25 A. I -- I don't remember. I don't remember if he

1 hit me or I hit him.

2 Q. No, sir. I'm just asking in this -- in the
3 written statement you just reviewed, does it say
4 anywhere that you actually struck him when you swung at
5 him?

6 A. No, not that I know of.

7 Q. And does it describe what physical contact, if
8 any, you actually made with him?

9 A. No.

10 Q. Okay.

11 A. To -- oh, there is, other than the fact that we
12 were -- had our hands on him, trying to get his hands
13 behind him to handcuff him.

14 Q. Okay. And so in this statement, do you recall
15 being asked to give more details about how much force
16 you would use against a suspect?

17 A. I -- I don't remember.

18 Q. Okay. Was it your understanding that you
19 needed to, in a statement like this, describe the level
20 of force you had used against a suspect?

21 A. Yes.

22 Q. Okay. Is the statement you read -- was it your
23 understanding that the statement you gave met the
24 standards of the internal affairs department?

25 MR. JIM DARNELL: Object to speculation.

1 A. Yeah, I -- I don't know how internal affairs
2 would have viewed it or --

3 Q. (BY MR. HILKE) Do you have any rea- --

4 A. -- what comments they made on it.

5 Q. I'm sorry.

6 Do you have any reason to believe that the
7 statement did not meet the standards of the internal
8 affairs department?

9 MR. JIM DARNELL: Object, speculation.

10 A. I mean, I didn't give a second statement, so
11 I -- I -- I would guess that it sufficed.

12 Q. (BY MR. HILKE) I'm going to stop sharing this
13 exhibit.

14 I know it's a lot of old history. Do you
15 remember being accused of using excessive force against
16 a Robert Anderson in 1981?

17 A. No.

18 Q. Okay. I'm going to go ahead and pull up an
19 exhibit now. This is going to be -- sorry. Give me one
20 second. This is going to be Exhibit Number 7.

21 THE REPORTER: I already have a 7 written
22 down. Oh, I may have just now done that. So sorry.

23 MR. HILKE: No problem. I -- I appreciate
24 it. I'm sorry.

25 (Exhibit 07 marked.)

1 Q. (BY MR. HILKE) So this is going to be Exhibit
2 Number 7. This is starting at City 55572.

3 (Exhibit 07 marked.)

4 Q. Scrolling up at the top, do you -- do you
5 identify this as a personnel investigation report of the
6 division of internal affairs?

7 A. Yes.

8 Q. And this is dated May 27, 1981?

9 A. Yes.

10 Q. And the complainant is Robert Anderson?

11 A. Yes.

12 Q. And the officer is -- involved is you, Earl
13 Arbogast?

14 A. Yes.

15 Q. So I'm scrolling down. You know, do you want
16 to take a minute to go ahead and read the description
17 again here? And just let me know when you're done.

18 A. I -- I did read it.

19 Q. Oh, okay. Great.

20 So Robert Williams [sic] alleged that you
21 had physically abused him for no reason; is that right?

22 A. Yes.

23 Q. And do -- do you recall, in fact, using force
24 against a Robert Williams?

25 A. You know, I don't remember this at all.

1 Q. That's fine.

2 I'm going to scroll up now. This is
3 City 55571 in the PDF. And do you see a statement here?

4 A. Yes.

5 Q. I'm going to apologize because it's really
6 faint. Can you make out your name, Officer E.W.
7 Arbogast, as the person giving this statement?

8 A. Yes.

9 Q. Okay. And I am going to direct you -- looking
10 at the middle of the statement, are you able to see
11 where it reads, "We used necessary force to put the
12 subject under arrest and in handcuffs"?

13 A. Yes.

14 Q. When giving a statement to internal affairs
15 about a complaint of excessive force, did you have a
16 duty to fully describe the force you had used?

17 A. Did I what?

18 Q. Did you have a duty to fully describe the force
19 you had used, if you had used force?

20 A. I would -- I would think so. I don't know if I
21 did in all the cases, but it was necessary to -- to --
22 to put in there that only the force necessary was used
23 on a suspect.

24 Q. Okay. And beyond saying that only the force
25 necessary was used, was it your responsibility to

1 describe exactly what kind of force you used so that
2 internal affairs could make its own decision if it was
3 necessary or not?

4 A. Yeah. It looks like the guy ran, and we
5 tackled him.

6 Q. Yeah. I'm -- I'm going to --

7 A. And then he still resisted. He wouldn't -- he
8 wouldn't -- we were trying to get the handcuffs on.

9 Q. Yeah. I'm going to stop sharing this for a
10 second because the question I want to ask you is not
11 actually about this exhibit in particular.

12 A. Okay.

13 Q. What I'm wondering is, beyond asking -- beyond
14 saying only the necessary force was used, did you have a
15 responsibility to describe exactly what force you used
16 so internal affairs could make an assessment?

17 A. Well, standing here today, I would think I
18 would have -- I would have put that in there, but if I
19 didn't, it was -- it was sufficient for them back then.

20 Q. Okay.

21 A. I mean, if they would have asked me what
22 exactly blow by blow what happened, I would have put it
23 in there.

24 Q. Okay. But other than answering questions or
25 follow-up questions from internal affairs, was it your

1 understanding that you were supposed to describe, not
2 just that you used necessary force, but exactly what
3 kind of force you had used?

4 A. I didn't -- I didn't think so, evidently,
5 because it was never -- never an issue back then.

6 Q. Did -- I'm going to change the topic.

7 Did you ever witness Al Mar- -- Al Marquez
8 conducting -- conducting interrogations?

9 A. I don't think I ever have.

10 Q. You were partnered with him for about a month
11 when you joined CAP; is that right?

12 A. Yeah. I was with him about the first month.

13 Q. Okay. And in that month, did you ever -- did
14 you join him for witness interviews?

15 A. I can't remember exactly what we did on that
16 case.

17 Q. So -- so sitting here today, other than Dan- --
18 other than the Lazo/England murders, do you have any
19 memory of seeing Al Marquez conduct interviews or
20 interrogations?

21 MR. JIM DARNELL: Object, assumes facts not
22 in evidence. I don't think there's been any indication
23 he saw Marquez interview anyone in this case.

24 MR. HILKE: That's fair.

25 Q. (BY MR. HILKE) I -- my question is really

1 about -- I don't want to talk -- so right now, I don't
2 want to talk about the Lazo/England murders. We can
3 leave that aside. Other than that, not saying anything
4 about what you witnessed or didn't witness Marquez doing
5 there, do you remember at any other time witnessing Al
6 Marquez conduct an interview or an interrogation?

7 A. I don't think I've ever witnessed it, no.

8 Q. At the time you gave -- well, strike that.

9 You -- you were present electronically for
10 some of Al Marquez's deposition in this lawsuit; is that
11 right?

12 A. His deposition here?

13 Q. Yes.

14 A. Yes.

15 Q. And so you listened to Al Marquez's deposition
16 testimony in this lawsuit; is that right?

17 A. Yes.

18 Q. And did you listen to the whole thing or only
19 parts of it?

20 A. I was here through most of it, if not all of
21 it.

22 Q. During the deposition, did Al Marquez say
23 anything you knew to be false?

24 MR. JIM DARNELL: What was the last -- I
25 didn't hear the last part, Wally.

1 MR. HILKE: Sure.

2 Q. (BY MR. HILKE) During Al Marquez's deposition,
3 did he say anything you knew to be false?

4 A. I don't remember that he did. I mean, I
5 listened in on it. It was long, and I don't remember
6 everything that was talked about, but nothing struck me
7 as being false right now. I don't -- I can't say that I
8 did.

9 Q. Okay. Do you recall --

10 A. Yeah, he just didn't rem- -- he just didn't
11 remember a lot of things.

12 Q. Yeah.

13 Do -- do you recall him saying anything
14 that you suspected to be false?

15 MR. JIM DARNELL: Objection, calls for
16 speculation.

17 Go ahead.

18 A. I don't remember that he did. I mean, if you
19 have something specific, I could answer to that, but
20 I -- I don't remember right now that he did.

21 Q. (BY MR. HILKE) So listening to Al -- Al
22 Marquez's testimony, as far as you know and can
23 remember, he told the truth; is that right?

24 MR. JIM DARNELL: Object, calls --

25 A. Yes.

1 MR. JIM DARNELL: -- for speculation.

2 A. Yes.

3 Q. (BY MR. HILKE) So I want to take you back to
4 1993.

5 A. Okay.

6 Q. It was on -- before you learned of the
7 Lazo/England murders, were you familiar with Daniel
8 Villegas?

9 A. No.

10 Q. Had you -- as far as you remember, had you ever
11 heard his name before?

12 A. Not that I recall. I don't...

13 Q. What about Robert England? Had you heard his
14 name before?

15 A. No.

16 Q. Or Armando Lazo?

17 A. No.

18 Q. What about Fernando Lujan, nickname Droopy?

19 A. No.

20 Q. Or Enrique Ramirez, nickname Popeye?

21 A. No.

22 Q. Or David Rangel?

23 A. No.

24 Q. Or Rudy Flores?

25 A. Yes.

1 Q. Okay. And how did you know a Rudy Flores?

2 A. I knew he was a gang member. I -- I knew that
3 he had some run-ins with the police, but I don't know
4 anything specific.

5 Q. Okay. And what about Rudy's brother, Javier
6 Flores?

7 A. Same thing.

8 Q. Okay. What about Rodney Williams?

9 A. Rodney who?

10 Q. Rodney Williams.

11 A. No.

12 Q. Or Marcos Gonzalez?

13 A. No.

14 Q. Did you know anyone from Daniel Villegas's
15 family?

16 A. No.

17 Q. And were you familiar with a na- -- a gang by
18 the name of LML, or Los Midnight Locos?

19 A. I think that was a gang.

20 Q. Had you heard of them before you learned of the
21 England/Lazo murders?

22 A. I might have, but I don't remember.

23 Q. You might have.

24 What about ECH, or the Eisenhower Crazy
25 Hoods?

1 A. Yes.

2 Q. What about DRC, or the Do Rock Crips?

3 A. I don't recognize that one.

4 Q. And what about VNE, or Varrio Northeast?

5 A. Yes.

6 Q. And we've talked a little bit about Al Marquez.

7 In 1993 -- one moment, please.

8 In 1993, you had worked with Al Marquez on
9 multiple investigations; is that fair?

10 A. I -- I don't know. I -- I don't think I did.

11 I don't know --

12 Q. Okay.

13 A. -- what investigations I worked with him.

14 Q. Yeah.

15 Did you work on -- with Al Marquez on more
16 than one investigation prior to 1993?

17 A. Yes, at times.

18 Q. And in your experience, did you ever have any
19 problems communicating with Al Marquez?

20 A. No.

21 Q. Did you believe him to be an effective
22 detective?

23 A. Yes.

24 Q. And today, when was the last time you saw Al
25 Marquez?

1 A. It was at -- on the computer.

2 Q. Sure.

3 What about before then?

4 MR. JIM DARNELL: Are you talking about
5 live?

6 Q. (BY MR. HILKE) I'm talking -- yeah, I'm
7 talking about the last time you saw Al Marquez before
8 the -- before his deposition where you saw him on the
9 computer.

10 A. I may have seen him -- it seems I may have seen
11 him -- it's been a long time. I can't remember the last
12 time I saw him.

13 Q. Have you talked with him at all about this
14 lawsuit?

15 A. No. I haven't seen him.

16 Q. Okay. And you had mentioned by 1993 -- strike
17 that.

18 Before 1993, had you worked with Scott
19 Graves on investigations?

20 A. Yes. We --

21 Q. Was he --

22 A. -- frequently we worked together.

23 Q. Was he a good communicator?

24 A. I'm sorry. Was he a communicator?

25 Q. Yeah. Did you have any problems communicating

1 with Scott Graves?

2 A. No. We worked real well together.

3 Q. Yeah. Would you describe him as an effective
4 detective?

5 A. Yes.

6 Q. Okay. And had you worked with Carlos Ortega
7 before the Lazo/England murders?

8 A. Before -- before the murder cases, you mean,
9 or --

10 Q. Yes.

11 MR. JIM DARNELL: Before this murder
12 case.

13 A. Yes. I -- I -- like I said, we would have a
14 team of detectives go out, and I would frequently be
15 assigned cases, to the murder cases where I was the case
16 agent and he -- he was in and out doing different stuff
17 in different cases that I had.

18 Q. (BY MR. HILKE) Was Carlos Ortega a juvenile
19 officer in the cases you worked with him on?

20 A. Yes.

21 Q. Okay. And did -- in your experience working
22 with him, did Carlos Ortega know the appropriate
23 policies for working with juveniles?

24 A. As far as I know. I really can't answer that.

25 Q. Okay. Did you rely on him to know the

1 appropriate policies on juveniles?

2 A. Yeah, I guess I would. I rely more on -- on
3 myself.

4 Q. Okay. And when was the last time you saw Scott
5 Graves?

6 A. A long time. I seem to have run into him at
7 the courthouse maybe a year and a half ago.

8 Q. Okay.

9 A. But I -- it was -- I -- I can't really
10 remember.

11 Q. Have you talked with him at all about this
12 lawsuit?

13 A. Yes, we used to talk about it.

14 Q. Okay. And how many times have you talked to
15 him about this lawsuit?

16 A. A few times. I mean, we were called by -- you
17 know, when this whole thing started and getting lawyers
18 and him wondering if he could attach on with me with Jim
19 Darnell, and we talked about the case, and so I talked
20 to him a few times.

21 Q. Yeah.

22 And would you describe Scott Graves as a
23 friend?

24 A. He -- he's not a friend that I hang around
25 with. He's a -- he's a good co-worker, though, that I

1 know. We're -- we're good co-workers.

2 **Q. Okay.**

3 A. We don't hang around outside of the department.

4 **Q. Okay. You -- you had a good working**
5 **relationship with Scott Graves when you worked with him**
6 **at El Paso Police Department; is that right?**

7 A. Yes.

8 **Q. And will you say that you -- you have a trust**
9 **in Scott Graves?**

10 A. Yes.

11 **Q. And as far as you can tell, does he have trust**
12 **in you as well?**

13 A. Yes.

14 **Q. And what about Carlos Ortega? When was the**
15 **last time you talked to Carlos?**

16 A. It's been years. I mean, it's -- I haven't
17 seen these guys -- you know, I -- I never hung around
18 guys when I was on the department off duty, and I
19 haven't hung around them since I've been retired -- or
20 since I quit the police department. I see them
21 infrequently here and there, but...

22 **Q. That makes sense.**

23 MR. HILKE: Let me check in with the other
24 counsel. How long do you have before you have to go for
25 your other meeting?

1 MR. MARTINEZ: I've got another 15 minutes.
2 It's just -- right before 1:00 is all we need, Wally.

3 MR. HILKE: Great. Great. Great. Great.

4 Q. (BY MR. HILKE) So I want to turn to the
5 investigation of the England/Lazo murders. Daniel
6 Villegas wasn't the first person identified as a suspect
7 in this case, was he?

8 A. No.

9 Q. The -- the Flores brothers, Rudy and Javier
10 Flores, had been interviewed in the investigation,
11 right?

12 A. Yeah. It was my understanding they were
13 interviewed.

14 Q. What is the -- what is the first thing -- well,
15 one of the first things you did in this case was take a
16 statement from Tonya Vinson; is that right?

17 A. Yeah. And the first thing was taking a
18 statement from Juan Medina, who was at the scene. It
19 was the first statement taken.

20 Q. Right. So Tonya wasn't the first statement,
21 but it was early in the investigation; is that right?

22 A. Yes.

23 Q. And Tonya Vinson was Armando Lazo's, the murder
24 victim's, former girlfriend; is that right?

25 A. I -- I don't remember that, but I understood

1 that he was a friend.

2 Q. Uh-huh. And she told you that a person named
3 Terrance had told her that Rudy Flores and his brother
4 did the shooting, right?

5 A. Yeah. It was a Terrance and a Charlie that had
6 told her.

7 Q. And Charlie. Okay.

8 And this was on April 12, 1993, that you
9 took her statement?

10 A. That sounds about right.

11 Q. Okay.

12 MR. JIM DARNELL: Can he look at his report
13 while you're going through dates?

14 MR. HILKE: You know what? It's -- I'm --
15 I'm not trying to impeach him on it or anything. I'm
16 just -- I'm just trying to lay the foundation, so I'd --
17 I'd rather keep moving at this point.

18 MR. JIM DARNELL: That's fine.

19 Q. (BY MR. HILKE) Ton- -- and Tonya's -- were you
20 aware that Tonya's sister, Teri, Teri Vinson, also made
21 a statement?

22 A. Oh, if her friend gave a statement?

23 Q. Her sister, Teri.

24 A. I think that she did.

25 Q. Okay. And in the investigation, there was

1 later follow-up where a statement was taken from
2 Terrance; is that right?

3 A. Yes.

4 Q. And is it consistent with your memory that
5 Sergeant Graves took that statement?

6 A. I think he did, yes.

7 Q. Okay. And I'm going to -- I'm going to
8 actually take a second and show you that statement
9 now --

10 A. Okay.

11 Q. -- from Terrance. Give me one moment, please.

12 Okay. So I'm now sharing another document.
13 This is Exhibit Number 8.

14 (Exhibit 08 marked.)

15 A. Okay.

16 Q. Bates stamped -- let's see down here. I'm
17 sorry. For some reason, this is giving me a little bit
18 of trouble. All right. Ah, there we go. It's
19 City 15743. I'm going to zoom in just a second.

20 So scrolling to the top, this is a -- do
21 you see here that this is a statement given to Scott
22 Graves?

23 A. Yes.

24 Q. And it's given by Terrance Strong Farrar?

25 A. Yes.

1 Q. And the date and time of the statement is
2 April 12, 1993?

3 A. Yes.

4 Q. So I'm going to go ahead and scroll down.

5 Do you see, sort of looking at the end of
6 the third line, where the statement says, "I know that
7 Rudy Flores was having problems with Armando Lazo
8 because Rudy was messing with one of Armando's friends"?
9 Do you see that part of the statement?

10 A. Yes.

11 Q. And then do you see a couple lines down where
12 it says, "Armando Lazo and Robert England were at that
13 party, and Rudy Flores also showed up to the party with
14 some other dude, but I don't know who he was"?

15 A. Yes.

16 Q. And then, "Rudy started to mess with one of
17 Armando's friends at the party, and Armando told Rudy to
18 leave him alone"?

19 A. Yeah.

20 Q. And then scrolling down a little bit, it says,
21 "I walked outside, and Armando and Rudy were having
22 words outside and getting ready to fight. I broke it up
23 before they fought. Rudy then told Armando that he was
24 going to shoot him." Do you see that?

25 A. Yes.

1 Q. And then a line lower, "Rudy left, and then 15
2 minutes later he came back with some of his friends, and
3 he wanted to fight Armando, but we wouldn't let Armando
4 go outside"?

5 A. Yes.

6 Q. And then, "Rudy then jumped into his gray
7 Cougar and told Armando that he was going to kill him
8 and all the rest of us" --

9 A. Yeah.

10 Q. -- right?

11 And finally, scrolling down a little bit
12 more, the statement says, "I was scared after that
13 because Rudy has tried to kill me, and he has stabbed at
14 me. And his brother, Javier "Dirt" Flores, has shot at
15 me before." Do you see that?

16 A. Yes.

17 Q. And in the course of the investigation, was
18 this an important lead?

19 A. Yes.

20 Q. And you have a person here who's been
21 identified as having a recent conflict with one of the
22 murder victims, right?

23 A. Yes.

24 Q. And actually is threatening to shoot and kill
25 the murder victim who has been shot and killed; is that

1 right?

2 A. Yes.

3 Q. And then you mentioned earlier that early in an
4 investi- -- strike that.

5 You mentioned earlier that in homicide
6 detecti- -- in homicide investigations, the detectives
7 would meet and share information; is that right?

8 A. Yes.

9 Q. Is this information you would have expected to
10 be shared with you as part of the investigation?

11 A. What was that?

12 Q. Is this information you would have expected to
13 be shared with you as you worked on the Lazo/England
14 murder?

15 A. Yes. I think I was aware of it.

16 Q. Okay. And then Rudy and Javier were both later
17 interviewed in this investigation, right?

18 A. Yes.

19 Q. You weren't present for those interviews, were
20 you?

21 A. We in trouble what?

22 Q. You were not at those interviews, were you?

23 A. No.

24 Q. To your knowledge, were Rudy and Javier ever
25 asked about their past interactions with Armando Lazo?

1 MR. JIM DARNELL: Speculation.

2 Go ahead.

3 A. Yeah, I don't know.

4 Q. (BY MR. HILKE) If they had been asked about
5 their interactions with Armando Lazo, that should have
6 been documented, right?

7 A. Yes.

8 Q. And to your knowledge, were Javier and Rudy
9 ruled out as suspects?

10 A. I -- I heard they were ruled out by Detective
11 Marquez.

12 Q. What was your --

13 A. This information here was given to Detective
14 Marquez --

15 MR. ALMANZAN: If you look in the file --

16 A. -- to look into the Flores brothers.

17 MR. ALMANZAN: -- defendants' counsels --

18 MR. HILKE: I'm sorry. I'm sorry. Is it
19 time to go?

20 MR. ALMANZAN: -- there is a vacation
21 certificate.

22 MR. HILKE: I'm sorry. Is that -- whoever
23 is speaking, is it about this current meeting?

24 MR. ALMANZAN: And the names are Frank's,
25 to begin with, because we need that one, and we need --

1 MR. MARTINEZ: Andy, you're -- we -- you're
2 not on mute. We can hear you.

3 MR. ALMANZAN: Oh, my bad. Okay.

4 MR. HILKE: Okay. He's talking about
5 something else. It's -- it's okay.

6 Q. (BY MR. HILKE) So -- right. So what was your
7 understanding, if any, of why Al Marquez had ruled out
8 Rudy and Javier?

9 A. I -- I didn't know.

10 MR. JIM DARNELL: Object to speculation.

11 Go ahead.

12 Q. (BY MR. HILKE) You didn't -- okay.

13 A. Yeah, I didn't know.

14 Q. And were you aware that Rudy Flores had
15 implicated a Rick Martinez as a shooter?

16 A. I don't know.

17 Q. Okay. I'm going to stop sharing for one -- I'm
18 going to stop sharing this document. I'm actually going
19 to show you another document.

20 A. Okay.

21 MR. JIM DARNELL: Have we got -- have we
22 had time to do that before they got to take off?

23 MR. HILKE: We do. This is just going to
24 take a couple of minutes.

25 MR. JIM DARNELL: Okay.

1 MR. HILKE: Actually -- okay. Actually,
2 you know, you're right. I'd better stop. It's a good
3 point to break.

4 THE VIDEO TECHNICIAN: All right. We're
5 off the record. The time is 12:54.

6 (Break taken.)

7 THE VIDEO TECHNICIAN: We are back on the
8 record for the deposition of Earl Arbogast being
9 conducted by videoconference. My name is Sydney Little.
10 Today is June 30th, 2022, and the time is 1:44.

11 Q. (BY MR. HILKE) Sir, do you remember how you
12 were first notified of the Lazo/England murders?

13 A. How I was notified?

14 Q. Yes, sir.

15 A. Yes. I received a call. I think the call was
16 from my sergeant, and I was given an address to go to.

17 Q. And were you on duty at the time -- or strike
18 that.

19 Do you remember where you were when you
20 received the call?

21 A. At that time of day, probably bed.

22 Q. Yeah.

23 And did you then report to the scene of
24 the -- the scene of the murder?

25 A. Yes, I did.

1 Q. What's the first thing you -- you remember
2 doing when you arrived?

3 A. I got with the sergeant. He kind of briefed
4 me -- briefed me on what he had.

5 Q. And what did -- what did he know at the time
6 you arrived?

7 A. At the time, he knew there -- there was a
8 shooting. There were two people that were shot.
9 There's an open field there that he's parked at, is
10 where the victims were. It was an apparent drive-by.
11 And then one of the victims also went to a residence to
12 try to get help, and he was taken to the hospital. And
13 then there were two witnesses that were with the two
14 victims. And then after that, that's when I took the
15 witness statement.

16 Q. At the time you arrived, had any shell casings
17 been found?

18 A. I don't -- I don't remember that there was. I
19 forget when crime scene got there. I think they got
20 there probably after me.

21 Q. And from your conversation with the sergeant,
22 were you aware of any immediate suspects in the case?

23 A. Was I aware of what?

24 Q. Any immediate suspects.

25 A. No.

1 Q. Did you also talk to patrol officers on the
2 scene?

3 A. I -- no, I didn't.

4 Q. Okay. So let me -- let me -- I'm going to show
5 you another exhibit now.

6 A. Okay.

7 Q. Let's see. Okay. We'll mark this Exhibit
8 Number 9. This is at City 265.

9 (Exhibit 09 marked.)

10 Q. I'm going to scroll into the top for a second.
11 Let's see. Is this a -- is this an El Paso Police
12 Department supplementary report?

13 A. Yeah, it is. It's taken on a computer. I've
14 been shown that.

15 Q. Okay. And this is a report dated May 6th,
16 1993; is that right?

17 A. Yeah. I don't see the date, but, yeah, it's --
18 if it's on there, then it's right.

19 MR. JIM DARNELL: Right there up at the top
20 of it.

21 Q. (BY MR. HILKE) Yeah. You see it on -- sort of
22 on the left side over here?

23 A. Oh, I -- oh, 5-6-93?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. And then I'm scrolling down to the
2 bottom of this page. That's your name at the bottom of
3 the statement, right?

4 A. Yes.

5 Q. This is your supplementary report?

6 A. Yes, it is.

7 Q. I want to call your attention to a couple of
8 paragraphs here. From the top of where I'm at on this
9 first page, do you see where it reads, "During the
10 course of the investigation over several days,
11 detectives received information that possibly the LML
12 gang was involved, especially the Flores brothers,
13 Javier and Rudy"?

14 A. Yes.

15 Q. And a little lower, do you see, "One such
16 source of this information was from Tonya Vinson, whom
17 undersigned took a statement from"?

18 A. Yes.

19 Q. "As a result of such information, both Rudy and
20 Javier Flores were interviewed on this case. However,
21 no connection was made to the Flores brothers."

22 A. Yes.

23 Q. Do you see, "Rudy Flores did implicate a Rick
24 Martinez, who was also brought to the CAP office and
25 interviewed"?

1 A. Yes.

2 Q. And do you see, "No connection could be made on
3 Rick Martinez, who cooperated in giving consent to
4 detectives to search his apartment for any weapons"?

5 A. Yes.

6 Q. "Undersigned and Detective Graves conducted the
7 search of Martinez' home." Do you see that?

8 A. Yes, I do.

9 Q. So -- so per your report, Rick Martinez was
10 interviewed in connection with this case; is that right?

11 A. Yes, I guess he was.

12 Q. And having been interviewed as a murder -- as a
13 murder suspect, there should have been a police report
14 documenting whatever Rick Martinez said; is that right?

15 A. Yes.

16 Q. And are you aware of any report documenting the
17 conversation with Rick Martinez?

18 A. No, I don't.

19 Q. Can you think of -- can you think of any reason
20 there wouldn't be a report documenting --

21 A. No, I can't.

22 Q. -- that conversation?

23 A. No, I can't.

24 Q. Okay. Okay. So I'm going to stop sharing --
25 actually, I'm -- I'm going to leave this open for just a

1 second. So it was -- and, actually, I'm going to go
2 ahead and scroll up to the top of this document. How
3 interesting. I'm sorry. I'm jumping around a little
4 bit here. I'm actually going to take you down to the
5 second page.

6 Just looking at the very bottom of this
7 statement, do you see where it say- -- of this page
8 that's -- as it's showing, do you see where it says, "On
9 4-21-1993, Detective Marquez received information from
10 David Rangel that Daniel Villegas was responsible for
11 the shooting"?

12 A. It's not on the statement. I had his statement
13 here. Hold on.

14 Q. Okay.

15 A. Okay. How -- how does it start out at?

16 Q. It starts out, "On April 21, 1993" --

17 A. Okay.

18 Q. -- "Detective Marquez received information from
19 David Rangel that" --

20 A. Yes.

21 Q. -- "Daniel Villegas was responsible for the
22 shooting"?

23 A. Yes.

24 Q. So my question is, at that time, on April 21,
25 1993, would you agree that the investigation of this

1 murder had gone cold?

2 A. Had gone what?

3 Q. Cold.

4 A. Cold? Probably somewhat, yes.

5 Q. Yeah.

6 Because at that time, Rudy Flores and
7 Javier Flores had been ruled out already, right?

8 A. Yes.

9 Q. And you were involved in going to Chaparral,
10 New Mexico, to talk to some juveniles who had claimed
11 involvement; is that right?

12 A. Yes, to -- to pick them up, yes.

13 Q. But they -- they were ruled out, also; is that
14 right?

15 A. Yes.

16 Q. And did you have any other viable suspects as
17 of -- before the tip from David Rangel came in?

18 A. Not -- not that I remember.

19 Q. Okay. So I'm going to -- I'm going to stop
20 sharing this exhibit for a second here now.

21 A. Okay.

22 Q. And do you have any -- do you have any
23 documents in front of you right now?

24 A. Just the statement that you were just referring
25 to.

1 Q. Okay. That's fine. And I'll just ask that if
2 you're referring to it, please state so for the record,
3 so we can be clear when you're looking at a document.

4 Does that --

5 A. Okay.

6 Q. -- make sense?

7 So do you recall -- David Rangel eventually
8 gave a statement implicating Daniel Villegas; is that
9 right?

10 A. Yes.

11 Q. And you witnessed David Rangel signing that
12 statement; is that right?

13 A. I don't recall that. I -- if my name's on it,
14 I witnessed it.

15 Q. Okay. I'm going to go ahead and share another
16 exhibit with you now. Okay. I'm now sharing
17 Exhibit 10.

18 A. Okay.

19 (Exhibit 10 marked.)

20 Q. This is at -- I'm sorry. Oh, gosh, that's hard
21 to read. Give me a second. This is at J.S. 15774. I'm
22 scrolling back to the top of the document here.

23 All right. Do you recognize this document
24 as a crimes against persons witness statement?

25 A. Yes.

1 Q. Okay. And this is dated April 21, 1993; is
2 that right?

3 A. Yes.

4 Q. And the time indicated is 7:20 p.m.; is that
5 right?

6 A. Yes.

7 Q. Was it -- was it in the practice -- in the
8 practice at crimes against persons, was it the practice
9 that the time on a statement was a time that the officer
10 started taking the statement?

11 A. Yes. That would be the -- usually, the time
12 started. I can tell you that -- that's what I would do.

13 Q. Okay. And so do you see, at the top, it
14 says -- it's hard to read the first, but I believe it
15 says, "My name is David Rangel, and I live at
16 8140 Tierra Verde. Right now, I am in the crimes
17 against persons office, where I am giving this statement
18 to Detective Alfonso Marquez"?

19 A. I see that part.

20 Q. Okay. I'm going to go ahead and scroll to the
21 bottom of this document right now. Do you see a
22 signature section on the second page of this document?

23 A. Yes, I see it.

24 Q. And that's your signature as the second witness
25 listed here?

1 A. That's my signature, yes.

2 Q. Okay. So you were -- so you witnessed David
3 Rangel signing this statement; is that right?

4 A. Yes.

5 Q. You wouldn't have signed your name as a witness
6 if you hadn't actually seen him sign it; is that fair?

7 A. No. He would -- he would have signed it, and I
8 would have signed it.

9 Q. Okay. And where were you when you witnessed
10 this statement being signed?

11 A. This is at the CAP office.

12 Q. Yeah. Where within the CAP office?

13 A. Well, it's just -- the CAP office is like one
14 big bay, separated by different cubicles, and it's
15 always -- it's in that bay that we were at.

16 Q. Okay. Was it typical for an officer taking a
17 statement to take the statement in his own cubicle?

18 A. Yes.

19 Q. And it was Al Marquez who took this statement,
20 right?

21 A. Yes.

22 Q. Would you have expected him to take it in his
23 cubicle?

24 A. Yes.

25 Q. Okay. And did you observe any of the interview

1 between Detective Marquez and David Rangel?

2 A. No.

3 Q. You would have come in just for signing --
4 signing as a witness; is that right?

5 A. Yes.

6 Q. Where were you before you were called in to
7 sign as a witness?

8 A. I was probably in my cubicle working cases.

9 Q. Okay. How close was your cubicle to Al
10 Marquez's cubicle?

11 A. Detective Marquez had a cubicle that backs into
12 mine back to back, catty-corner.

13 Q. Thank you.

14 And so would -- okay. So your cubicle and
15 Al Marquez's cubicle were adjacent diagonally to one
16 another --

17 A. Yeah.

18 Q. -- is that right?

19 A. Yeah. The actual corners would meet.

20 Q. Okay. And -- and going back up to the top of
21 this -- top of this statement, this -- the time on the
22 statement is 7:20 p.m.; is that right?

23 A. 7:20 p.m., yes.

24 Q. And did CAP detectives -- was a typical shift
25 for a detective 9:00 to 5:00, unless there was

1 investigation required outside of those hours?

2 A. Yes, unless we were working other cases.

3 Q. Okay.

4 A. Like I said, there were a lot of murder cases
5 at some point, you know. While we were there, sometimes
6 you'd be busy, sometimes you weren't. So the typical
7 hours would be 9:00 to 5:00, but if there were a lot of
8 cases, you worked all kinds of hours, a lot of --

9 Q. Yeah.

10 A. -- overtime.

11 Q. But by -- by 7:20 p.m anyone who doesn't have
12 to be at the office has gone home for the day; is that
13 fair?

14 A. Yeah, if they didn't have work they needed to
15 do, you know, if they went on another case. And I
16 forget when it was, but we used to have plus-50 murders,
17 that I remember, and I think we had it three years in a
18 row. We were called out all the time, so we were always
19 there late, a lot of people working murder cases.

20 Q. Okay. And so if you know, how long did Al
21 Marquez take to take the statement from David?

22 A. How long did it take him?

23 Q. Yeah.

24 A. I -- I can't answer that. I don't know.

25 Q. Okay. And when you witnessed the statement,

1 had you already had an interaction with Rodney -- with
2 Rodney Williams that day?

3 A. Yes, I think we do, because the sergeant had
4 called us and told us to pick up Rodney, and myself and
5 Detective Graves had picked him up.

6 Q. Okay. What did you do after you witnessed this
7 statement?

8 A. I can't remember exactly. I can tell you that
9 I -- I talked with Detective Marquez. He -- or the
10 sergeant, really. He wanted me to get a warrant for
11 Marcos --

12 Q. Okay.

13 A. -- Gonzalez, and so he tasked me with doing an
14 affidavit.

15 Q. Now, was there anything in David's statement --
16 well, okay.

17 And exactly what do you remember during the
18 time when you were witnessing this statement?

19 A. Well, I think part of the time we were -- we
20 had gone out to Irvin High School and picked up Rodney
21 Williams, and myself and Detective Graves did an
22 interview with Rodney Williams.

23 Q. Okay. And subsequent to that, you witnessed
24 this statement from David Rangel?

25 A. I can't remember what order it went in.

1 Q. Okay. At some point that night, you witnessed
2 the statement from David Rangel?

3 A. Yes.

4 Q. And from that time -- during the time you were
5 witnessing the statement, what exactly do you remember
6 happening?

7 A. Just -- just what I had mentioned, an interview
8 with Rodney Williams I think was taken the same night.

9 Q. No, but I'm -- I'm only asking about -- I guess
10 what I'm asking is, do you have an independent memory of
11 the interaction with Al Marquez, you, and David Rangel
12 when you came to witness this statement?

13 A. No, I don't think I got involved with Rangel,
14 either. I don't think I met him, other than signing the
15 statement -- or witnessing --

16 Q. Right.

17 A. -- it.

18 Q. But do you have an actual memory of seeing him
19 sign the statement?

20 A. You know, to tell you the truth, I really
21 don't. I -- if I signed it, I witnessed it, but I don't
22 remember from 30 years ago that -- yeah, I remember this
23 part, and he signed it. I don't --

24 Q. Okay. And so you don't remember -- and so is
25 it fair to say that although you can infer from seeing

1 your signature that you did witness it, you don't
2 remember anything else at all about what -- what was
3 happening there when you actually witnessed the
4 statement being signed?

5 A. For this statement, no.

6 Q. Okay. Now, do you remember if David had given
7 any information that implicated Rodney Williams as being
8 involved in the shooting?

9 A. I didn't know that, no.

10 Q. Okay. And if David had said that Rodney was
11 involved in the shoo- -- shooting, that should have been
12 recorded in David's statement, right?

13 A. Yes.

14 Q. Okay. And because it's a -- it's a detective
15 who actually types up the statement, right?

16 A. Detective Graves.

17 Q. I'm just saying that -- yeah. Okay.

18 And I -- I think this one is actually Al
19 Marquez, the David Rangel statement, just to not get
20 you --

21 A. Oh, for Rangel, it was --

22 Q. -- mixed up.

23 A. -- Detective Marquez, yeah.

24 Q. Yeah.

25 A. I thought you were talking about Rodney

1 Williams.

2 Q. Yeah. And so Rodney Williams was ultimately
3 charged with murder, wasn't he?

4 A. Yes.

5 Q. Are you aware of any documents that show how
6 Rodney Williams was first identified as a suspect?

7 A. No. I remember that the sergeant, Johnson, had
8 come up to us and told us to pick him up and to
9 interview and that he was implicated somehow, and so we
10 brought him back to the CAP office to interview him to
11 see if he had any knowledge of it.

12 Q. Right.

13 And are you aware of Rodney Williams's name
14 having come up at any prior point in the investigation?

15 A. No.

16 Q. And how a murder suspect is implicated is an
17 important piece of information in an investigation,
18 right?

19 A. Yes.

20 Q. So however he was first identified, that should
21 have been documented somewhere, right?

22 A. Yes.

23 Q. So when you were sitting diagonal to Al Marquez
24 and David Rangel, did you hear anyone yell at any time?

25 A. No. And, again, I'm not sure -- I'd have to

1 check the times. I'm not sure that wasn't the time we
2 were interviewing Rodney Williams. I'd have to look at
3 the times of this statement and the times we were
4 interviewing Rodney Williams.

5 Q. I understand.

6 Do you have any memory of overhearing Al
7 Marquez threatening David Rangel?

8 A. No.

9 Q. Or of Al Marquez raising his voice with David
10 Rangel in any way?

11 A. No.

12 Q. Okay. And when you were assigned to write an
13 arrest warrant for Marcos Gonzalez, did you write that
14 warrant at your cubicle?

15 A. I think I wrote it in my cubicle, yeah.

16 Q. Okay. And how long was it between when you
17 witnessed David Rangel's statement and when you started
18 writing the arrest warrant?

19 A. I'm not sure. I just remember Sergeant Johnson
20 tasking me with getting an affidavit, which I couldn't
21 do because Marquez had to give me information on it. He
22 was talking to, I guess, David Rangel, and he had to
23 give me the information and the probable cause to put on
24 the warrant so that I could do it.

25 Q. Okay. So -- so your recollection was that you

1 started -- you were assigned to write the warrant before
2 Marquez was done with Rangel; is that right?

3 A. I don't remember at what point, but he gave me
4 enough information in the affidavit already to get the
5 warrant, for the affidavit.

6 Q. Okay. What information were you waiting on to
7 write the warrant?

8 A. I -- I wasn't. When I talked to Al Marquez
9 the -- the one time to get the information that needed
10 to be included in the affidavit, I talked to him, I took
11 my notes, and then I went and did the warrant. He had
12 enough information when I first talked to him to
13 complete the affidavit to have enough to get that
14 warrant.

15 Q. And when you first talked to Al Marquez, was
16 he -- was he in his cubicle with David Rangel?

17 A. Yes.

18 Q. Okay. And so that was before you -- he was
19 done taking the statement and you witnessed it; is that
20 right?

21 A. Yeah. I was in the process of or finishing.
22 I'm not sure.

23 Q. Okay. And after you got the affidavit -- after
24 you finished typing the affidavit, what did you do next?

25 A. After I got the affidavit, I went back to the

1 CAP office, and we all met there with Sergeant Johnson,
2 and we went to Danny Villegas' house to get Marcos
3 Gonzalez. We had -- Al Marquez had information that he
4 was staying there.

5 Q. Yeah.

6 And when you say you went back to the CAP
7 office, was your cubicle in the CAP office?

8 A. My cubicle?

9 Q. Yeah.

10 A. Yes.

11 Q. So you were already in the CAP office when you
12 finished writing the warrant; is that right?

13 A. Right, but -- but we had to go find a
14 magistrate to issue the warrant.

15 Q. Right. So you would -- you -- you finished the
16 warrant, and you went to get this sergeant and Al
17 Marquez; is that right?

18 A. Well, I finished the affidavit. I went to a
19 magistrate. He signed off on it. Then I went back to
20 the CAP office, and that's when we were tasked to go to
21 Danny Villegas' house.

22 Q. Okay. Did -- who went with you to the
23 magistrate?

24 A. Say again.

25 Q. Who went with you to the magistrate with --

1 with the warrant?

2 A. I don't remember. Somebody would have gone.

3 I -- I don't remember. It was probably Detective
4 Graves. We were always together. But I can't say for
5 sure.

6 Q. Al Marquez was the one who actually signed the
7 warrant; is that right?

8 A. Yes. Before I left to the magistrate, I'm not
9 going to sign the warrant because I'm -- I'm not sure
10 that I have the details right. I want to make sure that
11 what he told me is what happened; that I didn't make a
12 mistake. So he read the affidavit.

13 MR. JIM DARNELL: He signed -- he signed
14 the affidavit rather than the warrant.

15 A. Yeah. Yeah. You're referring to the warrant.
16 He signed the affidavit, so --

17 Q. (BY MR. HILKE) Thank you.

18 A. I did the affidavit. I didn't sign it, but I
19 had to give it back to him because I'm not going to
20 attest to the facts --

21 Q. Right.

22 A. -- being correct because he knew what they were
23 and, if there was a mistake made, he would know.

24 Q. And just so I'm understanding, even though Al
25 Marquez signed the affidavit, he didn't necessarily take

1 the affidavit to the magistrate; is that right?

2 A. No. I -- I remember doing it.

3 Q. Okay. So you have a memory that Al Marquez
4 was -- did not come with you to bring the warrant to the
5 magistrate; is that -- I'm sorry. I'm so sorry. I keep
6 mixing them up. Strike that.

7 So your memory is that Al Marquez did not
8 come with you to bring the affidavit to the magistrate;
9 is that right?

10 A. Yes.

11 Q. Okay. Thank you. Okay. All right. Okay.

12 I'm going to stop sharing this for a
13 second. Give me just one second, please.

14 A. Okay.

15 Q. Okay. Okay. So I'm going to share another
16 exhibit with you.

17 MR. JIM DARNELL: Did you mark that last
18 one Exhibit 10?

19 MR. HILKE: Yes. That's David -- yeah, the
20 David Rangel statement is Exhibit 10.

21 MR. JIM DARNELL: Okay. I wrote that down,
22 but I didn't -- wasn't sure I ever actually heard you
23 say it.

24 MR. HILKE: Well, I -- you know, if I
25 didn't, thanks for catching it.

1 Q. (BY MR. HILKE) I'm going to mark Exhibit 11.
2 Yeah, give me one sec. I'm going to mark Exhibit 11 in
3 just a second here. Okay.

4 So I'm now marking Exhibit 11. This is a
5 transcript of trial -- of testimony from habeas
6 proceedings on September 15, 2011.

7 (Exhibit 11 marked.)

8 Q. And I'm going to scroll down a little bit. And
9 so I'm now on P4539 in this transcript and -- and, sir,
10 do you recall being asked this question and giving this
11 answer?

12 "Question: Okay. You got the warrant. Is
13 it feasible -- or is it typical that you are there at
14 Daniel -- where do you go after this? Do you go get
15 Marcos Gonzalez?

16 "A, answer: Once we got the warrant, we
17 will go to try to arrest the person that we get the
18 warrant for."

19 Is that -- do you recall being asked that
20 question and giving that answer?

21 A. Yeah. Yes.

22 Q. And do you recall being asked this question and
23 giving this answer?

24 "Question: And by this time, do you know
25 where he lives?

1 "Answer: Yes. I believe we had an address
2 where -- it was the same address where we arrested
3 Marcos and Daniel Villegas on Wren -- on Wren Street."

4 Do you remember that?

5 A. Yes. And if you could scroll up a little bit.

6 Q. Scroll up a little bit?

7 A. Yeah.

8 Q. Uh-huh.

9 A. There you go.

10 Q. Yeah.

11 So do you recall testifying that after
12 getting the warrant, you went to go get Marcos Gonzalez?

13 A. Yes.

14 Q. And do you recall testifying that at the time
15 you got the warrant, you already knew where Marcos
16 Gonzalez lived?

17 A. Yes. I think Detective Marquez had the
18 address.

19 Q. Okay. So in this testimony, it's not mentioned
20 at all that you stopped back at CAP after getting the
21 warrant, is it?

22 A. I -- I don't know, but we did.

23 Q. Okay. Do you have any explanation for why --
24 why that would not have been mentioned in your earlier
25 testimony?

1 A. I guess he didn't ask it.

2 Q. Okay.

3 A. Did he ask it?

4 Q. I'm going to stop sharing this document now.

5 And typically, was it your practice to go
6 immediately from getting a warrant to go make an arrest?

7 A. I mean, sometimes you do, but in this case, I
8 mean, you had other units that were investigating the --
9 the homicide, and so we went back to the CAP office.
10 The case agent was there. We wouldn't have gone without
11 him.

12 Q. Okay. And they were expecting you to come back
13 with a warrant; is that right?

14 A. Yes.

15 Q. Do you remember it taking very long once you
16 got back to then go and -- go to Daniel's house?

17 A. No. I think we went pretty much right away. I
18 think they were pretty ready.

19 Q. So who were -- who were all of the officers who
20 went to Daniel Villegas's house that night?

21 A. What I remember is myself, Detective Marquez,
22 and Scott Graves. And then there were other officers,
23 but I don't know who they were. I -- I don't remember
24 who they were.

25 Q. Right.

1 A. There -- and I think there were probably six of
2 us.

3 Q. Okay.

4 A. I think there were three cars.

5 Q. And did you-all arrive at the house at the same
6 time?

7 A. Yes.

8 Q. And did the inhabitants of the house
9 voluntarily let you-all in?

10 A. Yes.

11 Q. Who entered first?

12 A. I -- I -- well, I remember us knock- --
13 knocking on the door, and we were let in, but I'll tell
14 you I really don't remember that part of the
15 investigation very well. I do remember some things, but
16 I don't -- you're asking who went in first. I don't --
17 I don't remember.

18 Q. Sure.

19 But you remember being there when the door
20 was knocked on; is that right?

21 A. Yes.

22 Q. So both Daniel Villegas and Marcos Gonzalez
23 were at the house, right?

24 A. Yes.

25 Q. Okay. Do you remember which one you saw first?

1 A. Detective Marquez found Marco- -- Marcos
2 Gonzalez. He -- he was handcuffed. And then somehow
3 there was -- we were facing away because I -- I think we
4 had Marcos, and there was a commotion in the hallway
5 and, apparently, Danny Villegas was there, so Marquez
6 arrested him right there.

7 Q. Okay. So -- and when you say there was a
8 commotion, what did you mean by "a commotion"?

9 A. When -- when he got Danny Villegas.

10 Q. Okay. So Marquez -- Marquez got Vi- -- Danny
11 Villegas after he had arrested and handcuffed Marcos
12 Gonzalez?

13 A. Yeah. We -- we had Marcos Gonzalez first.

14 Q. Okay. And were either of them read their
15 rights at the house?

16 A. I don't remember that they were.

17 Q. Okay. And it's the department's practice that
18 suspects sign Miranda cards when they're read their
19 rights; is that right?

20 A. Yes.

21 Q. So if they were read their rights at the house,
22 there should be Miranda cards for them, right?

23 A. If they were read their rights at the house,
24 there would be, yes.

25 Q. And can you think of any reason why the

1 officers would have read the rights just to Danny and
2 not also to Marcos?

3 A. Okay. Could you ask that again?

4 Q. Yeah.

5 Can you think of any reason that the
6 officers would have read Danny his rights, but not read
7 Marcos his rights?

8 A. No, I -- I don't know.

9 Q. How long were you there at the house?

10 A. I'm guessing -- well, I'm not guessing.

11 MR. JIM DARNELL: Don't guess.

12 A. It -- I'm remembering maybe about 15 minutes or
13 so.

14 Q. (BY MR. HILKE) Who did you ride with on the
15 way back?

16 A. Detective Marquez.

17 Q. Okay. And was Detective Marquez driving?

18 A. Yes.

19 Q. Do you recall any -- any conflict at the house
20 while you were there?

21 A. No. It was normal families, just didn't know
22 what was going on. They were surprised.

23 Q. And did -- was permission -- and was -- was --
24 were -- were -- was Danny's mother there at the house
25 when you were there?

1 A. I don't remember.

2 Q. Okay. Did any -- was any -- was permission
3 asked from anyone to interrogate Danny?

4 A. I don't know.

5 Q. Okay. And you mentioned before, I think -- was
6 it that there was a card used by the police department
7 to get parental consent for juvenile interrogations?

8 A. A card?

9 Q. Yes, sir.

10 A. A Miranda card, you're talking about?

11 Q. No. A sort of a parental -- parental consent
12 form?

13 A. Yeah, there is for juvenile witnesses.

14 Q. Yeah. Was -- was a juvenile consent form given
15 at the house?

16 A. I don't know, but we wouldn't need it. He was
17 a -- he was a suspect --

18 Q. Ah.

19 A. -- in the case.

20 Q. Uh-huh. So because he was a suspect, you
21 didn't need his parents' permission, right?

22 A. Well, the thing is, is it's kind of a play on
23 words. You -- you arrest an adult. You get a warrant.
24 You have the probable -- probable cause. And then you
25 had Danny Villegas, who's a juvenile. He's not

1 arrested. Typically, he's in custody. You take him in
2 custody. But you have the probable cause, if he was an
3 adult, to arrest him, so permission is not really
4 needed.

5 Q. Uh-huh. Okay. So the -- the policy was that
6 permission was gotten for juvenile witnesses, but not
7 juvenile suspects.

8 A. Yes, if we could.

9 Q. If -- okay. And then after you left -- and
10 with you and Al Marquez, as you left, was anyone else in
11 the car with you?

12 A. No.

13 Q. Was Danny Villegas in the car with you --

14 A. Oh, I'm sorry.

15 Q. -- as you guys went?

16 A. Yeah.

17 Q. That's okay.

18 A. Yeah, Danny Villegas was.

19 Q. Other than you, Marquez, and Danny, was anyone
20 else in the car with you?

21 A. No.

22 Q. What was the next place you went?

23 A. We had driven to a place called "Northpark
24 Mall." There's a parking lot right there on the way --

25 Q. And --

1 A. -- to both the stations.

2 Q. Yeah. Do you remember what route you took to
3 get to Northpark Mall?

4 A. I don't -- I don't remember what was talked
5 about. I know probably why we stopped.

6 MR. JIM DARNELL: No. He's --

7 Q. (BY MR. HILKE) No.

8 MR. JIM DARNELL: -- saying "route."

9 Q. (BY MR. HILKE) I'm sorry.

10 A. Oh, what route.

11 Q. Yes, sir.

12 A. I -- I'd have to look at a map, but it's --
13 it's just right down the street. I mean, it's a direct
14 route.

15 Q. Yeah. Give me one second.

16 A. It would -- it would be on the way to the CAP
17 office and the juvenile processing center.

18 Q. I understand. Just one second, please. Okay.
19 All right. Sorry. I'm like 30 seconds away here.

20 Okay. So I'm going to share another
21 exhibit now. This'll be Exhibit 12.

22 (Exhibit 12 marked.)

23 Q. Do you see here a -- a map with the location
24 "5700 Wren Ave." with a little marker?

25 A. Yes.

1 Q. Okay. And do you see various street names
2 around Wren avenue?

3 A. Yes.

4 Q. Does that refresh at all what route you took in
5 getting to Northpark Mall?

6 A. It -- it's not, but had we taken the -- the
7 most direct route would be going west on that map to the
8 end and then going north.

9 Q. Okay.

10 A. And going -- when you go west on Wren Street,
11 you should hit a street called "Diana," where the
12 shopping -- where the -- the mall is.

13 Q. Sure.

14 So -- so you can say what the most direct
15 route would be, but sitting here today, you don't have
16 any memory of what the actual route was; is that fair?

17 A. No. I -- I'm just telling you what the most
18 direct route is from here.

19 Q. Okay. Thank you. I'm going to stop sharing
20 this now. That was Exhibit Number 12.

21 So -- and am I correct that -- is it your
22 testimony that you don't remember what the interaction
23 was at Northpark Mall that night?

24 A. I don't remember what it was. I -- I -- I
25 think I know what it was, but I -- I don't actually

1 remember the conversation.

2 **Q. What do you think it was?**

3 A. It was just -- since Detective Graves was
4 behind us with Marcos and we were in front of them and
5 we were going to different stations, it was just
6 basically to get out and say, look, make sure we keep in
7 contact with each other, if you find out something
8 that's really significant that I should know about, you
9 know, let me know, and that took a few seconds.

10 **Q. So Sergeant Graves had been involved in earlier**
11 **stages of the investigation; is that right?**

12 A. He had been what?

13 **Q. Involved in earlier stages of this**
14 **investigation.**

15 A. Yes.

16 **Q. And so had you, right?**

17 A. Yes.

18 **Q. And Marquez was the case agent, right?**

19 A. Yes.

20 **Q. Is there any reason Sergeant Graves wouldn't**
21 **know to keep you updated about what he found in his**
22 **conversations with Marcos?**

23 A. Well, yeah, it might be important. I mean, if
24 Marcos gives the location of the gun that was used, it
25 would be nice to know for Al Marquez.

1 Q. Okay. Right. But my question is, do you think
2 Sergeant Graves already knew that if Marcos told him
3 where the gun was, he ought to tell Al -- Al Marquez
4 about that?

5 MR. JIM DARNELL: Object, form.

6 A. If Marcos had told -- told Graves?

7 Q. (BY MR. HILKE) Yeah. Don't you think Sergeant
8 Graves knew --

9 MR. JIM DARNELL: (Indiscernible.)

10 THE WITNESS: Uh-huh.

11 MR. JIM DARNELL: Go ahead.

12 Q. (BY MR. HILKE) Don't -- don't you think
13 Sergeant Graves knew he should share any important
14 details he got from Marcos with Al Marquez?

15 A. Yes, but you always want to make sure. I'm --
16 I'm just saying that's what I think the conversation
17 was. I can't think otherwise.

18 Q. Sure. So --

19 A. I'm just about positive that's what it was.

20 Q. And sitting here today, you don't have any
21 other explanation for why you made that stop; is that
22 right?

23 A. No.

24 Q. And how long was the stop, if you remember?

25 A. Probably -- it was -- it was less than a

1 minute. Maybe 30 seconds.

2 Q. Okay. And although you don't remember their
3 names, there were other officers present, right, for the
4 arrest?

5 A. Yes.

6 Q. Did they also come to Northpark Mall?

7 A. I don't remember.

8 Q. What was your next stop after Northpark Mall?

9 A. We went to the juvenile processing center on
10 Delta Street.

11 Q. Okay. You didn't stop at CAP first, did you?

12 A. No.

13 Q. About how long was it of a drive between
14 Northpark Mall and CAP?

15 A. It's usually -- and at that time at night, it
16 will be between 10 and 15 minutes, I would estimate.

17 Q. And about how long was it between Northpark
18 Mall and JIS?

19 A. Okay. I think I mis-stood you on the first
20 one. Between North- -- Northpark Mall and JIS would be
21 10 to 15 minutes.

22 Q. Okay. How long would it be between Northpark
23 Mall and the CAP office?

24 A. Oh, quicker.

25 Q. Uh-huh.

1 A. Eight -- eight to ten minutes, maybe.

2 Q. Okay. And how far away were the CAP office and
3 JIS?

4 A. It's -- it's a good distance. I would say
5 seven, eight miles.

6 Q. Okay. And around that time, how long did it
7 take you to drive that?

8 A. To JIS?

9 MR. JIM DARNELL: To drive -- to drive
10 which? I'm sorry.

11 Q. (BY MR. HILKE) To drive from CAP to JIS.

12 A. Oh, if you were driving from CAP to JIS, it
13 would probably take you -- for -- let's see. Go down --
14 probably six, seven minutes.

15 Q. Okay. And -- and JIS, is that the sa- -- is
16 JIS the same as the juvenile facility? Is that the same
17 juvenile facility where you took Daniel Villegas?

18 A. Right. It's a juvenile -- approved facility to
19 take juve- -- juveniles.

20 Q. Yeah.

21 Had you been at JIS at any earlier time
22 that day?

23 A. No.

24 Q. Had you been to any other juvenile facility
25 earlier that day?

1 A. No.

2 Q. Was -- and when you arrived at JIS, what was
3 the first thing you did?

4 A. Well, he was signed in by Detective Marquez,
5 and then I can't remember if Detective Ortega was there
6 yet or not, but eventually Villegas was taken back to an
7 office in the building.

8 Q. And when Marquez -- I'm sorry. When Daniel was
9 signed in, it was Al Marquez who signed him in?

10 A. I think it was.

11 Q. And is that just like a sheet anyone can sign,
12 or is there some officer who's keeping a log as people
13 are signed in?

14 A. It's just a log there, and you sign in when you
15 bring a juvenile in.

16 Q. Okay. So no -- no one's watching over that
17 log. That's just -- is that right?

18 A. Correct.

19 Q. Okay.

20 A. No.

21 Q. And you mentioned that Daniel was taken to an
22 office. What office was he taken to?

23 A. Well, he's taken back to where the detective
24 offices are, in that building.

25 Q. Uh-huh.

1 A. It's an L-shaped building.

2 Q. Okay.

3 A. And if you -- if you picture the top of the L
4 and that -- and that -- that stretch of it, that's --
5 that's where you have the offices. And I was at the
6 opposite end of the L, waiting.

7 Q. So like almost like diagonal between the two
8 sides of the L.

9 A. I was probably about as far as away as I could
10 get --

11 Q. Okay.

12 A. -- in the building.

13 Q. And where is the entrance to the building?
14 Where on the L you -- do you come in?

15 A. Right where I was waiting.

16 Q. Okay. So you just hung out at the entrance.

17 A. Yes.

18 Q. Okay. And what did you do while you were
19 there?

20 A. I was with Officer Brown, and we were just
21 there talking and we -- we really didn't do anything
22 until Detective Marquez took Villegas to the juvenile
23 probation department.

24 Q. Okay. And do you know how Officer Brown ended
25 up being at that facility that night?

1 A. Yeah. He -- I think -- he was with the gang
2 task force, and we had some of the guys working with us
3 from there.

4 Q. Okay.

5 A. And he may have -- he -- but he was there that
6 night.

7 Q. Okay. And was his role there to provide gang
8 intelligence for the investigation?

9 A. Was he there for what?

10 Q. To provide gang intelligence.

11 A. What was he there to provide?

12 Q. Was he there to provide information on gangs?

13 A. Gangs? Yeah. That's what they were there for,
14 the gang task force.

15 Q. Okay. And when you arrived at JIS with Daniel,
16 had he been questioned about his involvement in the
17 murders?

18 A. No.

19 Q. Had he admitted any acknowl- -- any involvement
20 in the murders?

21 A. No.

22 Q. So if -- if Carlos Ortega said that he arrived
23 at JIS around 11:00 p.m., would you have any reason to
24 disagree with that?

25 A. Well, I know that we signed in at 11:30, and I

1 don't remember seeing him. He may have been in the
2 back.

3 Q. Okay. And so then if Carlos Ortega said that
4 he first found Daniel -- saw Daniel around 11:15 or
5 11:30 p.m., that would be pretty close to the time you
6 signed Daniel in; is that right?

7 A. 11:30, yeah.

8 Q. Okay. And -- sorry. So Daniel -- how long did
9 you remain at -- at the JIS building?

10 A. I -- I think we were there about an hour before
11 we went to the juvenile probation department.

12 Q. When you went to juvenile probation, did Link
13 Brown come with you?

14 A. You know, I -- I didn't remember that he went
15 with us, but I know from reading the reports, I think
16 Carlos Ortega and Link Brown were with me and Al Marquez
17 when we went over. I don't remember them, though,
18 walking over with us.

19 Q. Do you recall seeing Link Brown at any later
20 time that morning?

21 A. No.

22 Q. Did -- so Danny is taken to the juvenile
23 probation building; is that right?

24 A. He -- he was what?

25 Q. Taken to juvenile probation.

1 A. Yes, he was.

2 Q. And that's just a short walk from JIS; is that
3 right?

4 A. Yeah. The -- the buildings are right next to
5 each other.

6 Q. And at JP- -- and "JPD" is the acronym for
7 juvenile probation, right?

8 A. Yes.

9 Q. And so at JPD, Danny gets his warnings from a
10 juvenile officer, right?

11 A. Yes.

12 Q. And he was also -- he was -- you then took him
13 to a magistrate judge, right?

14 A. At the juvenile probation department, yes.

15 Q. And the magistrate judge, likewise, warned
16 Danny of his rights, didn't he?

17 A. Yes.

18 Q. So -- and both of those steps had to take
19 place -- both of those warnings had to take place before
20 Danny was questioned about the crime, right?

21 A. They were what?

22 Q. Daniel had to get both those warnings before he
23 was questioned about the crime, right?

24 A. Yes.

25 Q. Okay. And at any time when you were at JIS,

1 did you go back to where Marquez and Daniel were
2 located?

3 A. No.

4 Q. And was it your understanding that Carlos
5 Ortega had to prepare some paperwork before going to
6 JPD?

7 A. He was there to ensure the juvenile's rights.
8 I don't know if he did any paperwork. I can tell you
9 I -- when I do it, I usually do all of it.

10 Q. Okay. Was any additional paperwork generated
11 at JIS?

12 A. Yeah, there would be.

13 Q. Okay. And -- okay. Did you know at the time
14 who crea- -- who generated that paperwork?

15 A. I -- I don't know who -- who did it.

16 Q. Okay. And had you been involved in
17 investigations involving juveniles who were taken to JIS
18 prior to this?

19 A. Yes.

20 Q. And so were you familiar with the back
21 detective area where Daniel was taken?

22 A. Yes.

23 Q. And is the -- was there an area back there
24 where -- was there a specific area where juveniles were
25 taken when they were taken back there?

1 A. A specific area?

2 Q. Yes.

3 A. No.

4 Q. Okay.

5 A. Back -- back in that area that you're talking
6 about are detective offices, so you just use one of
7 those.

8 Q. Okay. And those are the same detective offices
9 where -- well, strike that.

10 Did those detective offices have computers
11 for preparing paperwork?

12 A. Yes.

13 Q. Okay.

14 MR. JIM DARNELL: Wally, we've been going
15 about an hour. Can we take a break? And we want to --
16 somehow, the volume got turned down on his computer, and
17 we want to turn that up a little bit, too.

18 MR. HILKE: Let's -- that's great. Let's
19 go off the record.

20 MR. JIM DARNELL: Okay.

21 THE VIDEO TECHNICIAN: Okay. We're off the
22 record. The time is 2:42.

23 (Break taken.)

24 THE VIDEO TECHNICIAN: We are back on the
25 record for the deposition of Earl Arbogast being

1 conducted by videoconference. My name is Sydney Little.
2 Today is June 30th, 2022, and the time is 2:52.

3 MR. JIM DARNELL: Wally, there was one
4 place he -- his hear- -- we didn't hear it right, or he
5 didn't hear it right, and that was on the issue of
6 whether Daniel Villegas said anything at his home. Do
7 you want him to explain that? Do you want to ask him
8 again? However you want to do it.

9 MR. HILKE: Yeah. Let's -- yeah, let me
10 ask a couple of questions.

11 MR. JIM DARNELL: Okay.

12 Q. (BY MR. HILKE) Let me start with this:
13 Through the time -- from the time you went to Danny's
14 house to the time you took him to JPD, did Daniel say
15 anything implicating himself in the crime?

16 A. Not -- not in front of me, no.

17 Q. Okay. But you -- and do you remember him
18 saying something when he was -- when -- at his home?

19 A. No, I don't remember him saying anything.

20 Q. Okay. I'm going to ask -- I'm going to show
21 you an exhibit now. This is one we've looked at before.
22 So I'm sharing, again, Exhibit Number 4. These are the
23 sort of juvenile policies. Right now, I'm at
24 City 21505. And in front of you at the top of this
25 document is "7.02.012, Witness Statement." Do you see

1 that?

2 A. Yes.

3 Q. And this is saying, for a juvenile to give a
4 witness statement, an officer needs permission from a
5 parent or a legal guardian; is that right?

6 A. Yes.

7 Q. And I think you said that -- well, that doesn't
8 apply for confessions. This is just for witness
9 statements for nonsuspects; is that right?

10 A. Yes.

11 Q. I want to show you a couple of other things.
12 I'm scrolling up in this document. Yeah, so I'm now at
13 City 21502, under "7.02.209, Interrogation." Do you
14 see -- this is going to be the second sentence, where it
15 says, "When a juvenile is to be interrogated at his
16 home, parental permission is requested prior to
17 interrogation. If denied, the interrogation is not
18 conducted." Do you see that?

19 A. Yes.

20 Q. So according to this policy, if you had asked
21 Daniel's parents to interview him at his home and then
22 they had said, "No, you can't" -- I'm -- strike that.

23 According to this policy, if Daniel's
24 mother was asked, "Can we interr- -- can we interrogate
25 Daniel at his home," and the parents said "no," it would

1 have been improper to conduct any interrogation; is that
2 right?

3 A. By this poli- --

4 MR. ALMANZAN: Objection, calls for
5 speculation and lack of foundation from this witness to
6 answer that question.

7 Q. (BY MR. HILKE) Okay. You can answer.

8 A. By that policy, yes.

9 Q. Okay.

10 A. I'm reading it.

11 Q. And do you have any reason to doubt that this
12 was a policy in effect at the time Daniel was arrested?

13 A. I -- I don't --

14 MR. ALMANZAN: Objection, calls for
15 speculation and lack of foundation.

16 Q. (BY MR. HILKE) Go ahead.

17 A. I -- I don't know.

18 Q. Right, I -- I know you don't know, but do you
19 have any reason to doubt that this was the policy?

20 MR. ALMANZAN: Objection --

21 A. No.

22 MR. ALMANZAN: -- calls for speculation and
23 lack of foundation.

24 Q. (BY MR. HILKE) You can answer.

25 A. No.

1 Q. Okay. And I'm going to scroll back down for a
2 minute here. Yeah. This is at City 21505. Do you see
3 where it says "7.02.01 3, Investigation of Students at
4 Public Schools"?

5 A. Yes.

6 Q. And do you see the first line? "In all
7 investigations involving the questioning or arrest of a
8 juvenile on school grounds and during school hours,
9 officers contact the school principal or assistant
10 principal and explain the reason for desiring to arrest
11 or question the juvenile"? Do you see that?

12 A. Yes.

13 Q. It continues, "The officer can request
14 permission to question the juvenile at the school or
15 request permission to take the student from the school
16 for the purpose of questioning him or placing him under
17 arrest"; is that right?

18 A. Yes.

19 Q. So at least according to this document,
20 generally, a juvenile can't --

21 UNIDENTIFIED SPEAKER: Good afternoon,
22 everybody. How are you y'all doing? All right.

23 UNIDENTIFIED SPEAKER: Hi, David.

24 MR. HILKE: Jeep, Jeep, your audio is on.
25 You're not -- thanks.

1 Q. (BY MR. HILKE) According to what you've just
2 read, an officer needs permission to question a juvenile
3 at a school during school hours, right?

4 A. Yes.

5 Q. Or to take a juvenile from the school to
6 ques- -- during school hours to question him somewhere
7 else, right?

8 A. Yes.

9 Q. So do you have any explanation for why,
10 according to what we've just read, an officer needs
11 permission to take a student from school for questioning
12 and needs permission from a parent to interrogate a
13 stu- -- a juvenile at their home, but doesn't need
14 permission from a parent to take a juvenile from their
15 home and question them somewhere else?

16 MR. ALMANZAN: Objection, calls for
17 speculation --

18 MR. JIM DARNELL: Calls for speculation.

19 MR. ALMANZAN: -- lack of foundation.

20 A. No.

21 Q. (BY MR. HILKE) And was that your understanding
22 of El Paso's policies at the time you arrested Daniel?

23 MR. ALMANZAN: Objection, calls for
24 speculation, lack of foundation.

25 A. At the time we arrested Danny, we -- we went by

1 what we normally did in our routine. And if we had a
2 suspect, we -- we took him into custody -- if we had
3 probable cause, anyway, to take them into custody, and
4 we would transport him to the JIS office and begin to
5 process.

6 Q. (BY MR. HILKE) Were you familiar with any of
7 these specific policies at the time you arrested Daniel?

8 A. I can't remember then, no.

9 Q. Okay. So sitting here today, you can't say one
10 way or another if you were aware of the policies we've
11 just looked over; is that fair?

12 A. Yes.

13 Q. Okay.

14 A. I would add one thing. I mean, I -- I know for
15 witnesses and when we would deal with school authorities
16 in our cases, the school authorities would always want
17 to contact the parent and obtain the parents'
18 permission. School authorities sometimes weren't
19 cooperative with us, so we'd have to leave. But the
20 parent -- parent was contacted by the principal or
21 somebody. Then we would interview at the school
22 sometimes. They would take a statement from them at the
23 school.

24 Q. Yeah. So your understanding was you couldn't
25 take a student from school to interrogate them without

1 permission, but you could take a juvenile from their
2 home to interrogate them without permission.

3 A. We -- we just -- we just -- if -- if we had
4 permission to talk to them at the school, all I'm saying
5 is we would talk to them and take a statement if we
6 needed. If we wanted all access, we didn't have any
7 choice. We would leave.

8 Q. I'm sorry.

9 A. This is for witnesses.

10 Q. I'm -- I'm sorry. Did -- what was your
11 understanding, if any, of what you needed to do to pick
12 up a juvenile suspect from a school to be interrogated?

13 A. If we had probable cause and -- and, again,
14 to -- if he was an adult and we had probable cause to
15 pick him up and get a warrant, if we had the same
16 information on a juvenile and we had the probable cause
17 to show that he committed a crime, we picked him up, and
18 we took -- we took him into custody, and then we would
19 take him to J- -- JIS.

20 Q. Okay. So if you had probable cause on a
21 juvenile and they happened to be at school, you didn't
22 need any permissions to go and pick them up.

23 A. No. If we had probable cause to take into
24 custody, we took into custody.

25 Q. Okay. I'm going to stop sharing this now.

1 When -- to your knowledge, when did Daniel
2 first say that he wanted to give a statement in this
3 case?

4 A. It -- it -- it -- it was sometime when he was
5 taken to the back offices. I -- I don't know that, but
6 I'm assuming that. I -- I don't know exactly when.

7 Q. All right. Okay. Let me -- let me -- let me
8 make sure I'm just asking you about what you know.

9 Do you have knowledge of when Daniel first
10 said he wanted to give a statement?

11 A. No.

12 Q. And do you have knowledge of any times that
13 early morning when Daniel was alone with Al Marquez?

14 A. Was I aware of what? What do you mean?

15 Q. Of -- of Daniel and Al Marquez being alone with
16 one another at any time that morning.

17 A. I don't know.

18 Q. So you also -- you were directed to go pick up
19 Rodney Williams.

20 A. Yes.

21 Q. And did Rodney --

22 A. Hang on one second. On the question you asked
23 me about Marquez being alone with him at any point,
24 you're talking about at the JIS office, right?

25 Q. I'm sorry. No, sir. I'm asking about at any

1 point -- at any point that morning.

2 A. I -- I don't know. I wasn't with Marquez all
3 the time everywhere, so I don't know. But when we went
4 to the house and I -- I wasn't with him the whole
5 time --

6 Q. Right. So --

7 A. -- there. I don't -- I don't remember being
8 with Detective Marquez and -- and Daniel when he was
9 arrested. I remember being away from them with Marcos.
10 But after that, I mean, I don't know what he did,
11 whether he was alone with him. I -- I don't know.

12 Q. Okay. I want to talk about Rodney Williams
13 now. And do you remember where Rodney Williams was when
14 you picked him up?

15 A. Yes. He --

16 Q. Where was he?

17 A. He was at Irvin High School, and I think we had
18 that information at the basketball courts, and we had
19 that information, too.

20 Q. Okay. How -- how did you know where to look
21 for him?

22 A. It was just given us, the location. I don't
23 know how they got it.

24 Q. Okay. And am I correct that you tried to talk
25 to Rodney Williams?

1 A. I -- I talked with him. I mean, we took him
2 back to the CAP office.

3 Q. Yeah.

4 A. And myself and Detective Graves did a joint
5 interview with him.

6 Q. Okay. And do you remember Rodney Williams
7 asking for his mom at some point when you talked to him?

8 A. I don't remember that.

9 Q. And one of the first things you would have done
10 in talking to Rodney Williams would have been making
11 sure you had correctly identified him, right?

12 A. Yes.

13 Q. So you would have made sure that he was -- so
14 you would have asked for his date of birth in that
15 interview, right?

16 A. Well, yes, we would have asked him his name
17 and -- and particulars about him.

18 Q. And that's -- that's a fairly typical early
19 step in an investigation, right?

20 A. Yes.

21 Q. And so then, early on, you would have learned
22 that Rodney Williams was only 15 years old, right?

23 A. I think -- I think we learned that he was a
24 juvenile, yes.

25 Q. Yeah. And at that point, Rodney Williams was

1 being asked about his involvement in the murders, right?

2 A. If he knew anything about the murders.

3 Q. Yeah. And he -- he placed himself in the car
4 on the night of the shooting, didn't he?

5 A. I wasn't there for the whole interview. I
6 don't remember that. While I was interviewing him, and
7 everything, I don't -- I didn't -- he didn't have any
8 involvement --

9 Q. Did you --

10 A. -- that I know of.

11 Q. Okay. Did -- and did -- after you found out
12 that Rodney was a juvenile, did you get parental
13 permission to speak with him?

14 A. I don't remember if the parents were attempted
15 to be notified. I would assume that they would have
16 been, but I can't remember that.

17 Q. Uh-huh. Was -- was he taken to a juvenile
18 officer before giving a statement?

19 A. No.

20 Q. Was he taken to a magistrate?

21 A. No.

22 Q. And --

23 A. He was a witness.

24 Q. To your knowledge, was Rodney ever taken to a
25 magistrate?

1 A. I -- I don't know that. I -- when I
2 interviewed him and when I had my part of the interview
3 done, I don't think I ever saw Rodney Williams again.

4 Q. Okay. And as far as you know, it was Detective
5 Graves who completed the statement from Rodney?

6 A. Yes.

7 Q. And this was at the crimes against persons
8 office that you spoke with Rodney; is that right?

9 A. Yes.

10 Q. Okay. And let me -- I'm going to share another
11 exhibit with you. Give me just one moment.

12 Okay. So this is going to be -- let me see
13 here. This is going to be Exhibit Number 13.

14 A. Okay.

15 Q. It's starting at -- let's see. Oh. Here we
16 go. This is Villegas J.S. 15779.

17 (Exhibit 13 marked.)

18 MR. JIM DARNELL: I thought the juvenile
19 statements policy was 13.

20 MR. HILKE: No. The juvenile policy was 4
21 because I had already shown it.

22 MR. JIM DARNELL: Oh, it was the same one?

23 MR. HILKE: Yes, sir.

24 MR. JIM DARNELL: Okay. My bad.

25 MR. HILKE: You're good.

1 Q. (BY MR. HILKE) So looking at the top here,
2 this is a statement. And can you see okay? Do you need
3 me to zoom in at all?

4 A. No. I can read it.

5 Q. Yeah?

6 This is a statement given to Detective
7 Scott Graves, right?

8 A. Yes.

9 Q. And it's by Rodney Williams, right?

10 A. Yes.

11 Q. And it says that his date of birth is
12 August 29, 1977, right?

13 A. Yes.

14 Q. And that would have made him 15 years old at
15 the time; is that right?

16 A. Yes.

17 Q. And looking at the bottom, there are some time
18 stamps here, right?

19 A. Yes.

20 Q. And so it looks like -- the first "typed by,"
21 is that the time when the author starts taking the
22 report?

23 A. You know -- hmm. I -- I used to know what all
24 those times meant, and it's been so long, I -- I forget
25 now.

1 Q. That's fine.

2 In any event, the time for the approving
3 officer would have been the time it was finished, right?

4 A. It looks like it.

5 Q. Okay. So up at the -- let's see. Yes, let
6 me -- let me go over this statement a little.

7 So Rodney Williams is saying that he's
8 giving this statement to Detective Graves of his own
9 free will; is that right?

10 A. Yes.

11 Q. You know, I think I'm actually going to ask you
12 to read -- to read this whole statement, and I'll scroll
13 down when you need to, and you can let me know when
14 you're done, okay?

15 A. Okay.

16 MR. JIM DARNELL: Read it -- read it to
17 himself?

18 MR. HILKE: To himself, please, yes.

19 THE WITNESS: Yeah.

20 MR. JIM DARNELL: Okay.

21 A. The right half of the statement is blocked off
22 by the -- the people.

23 Q. (BY MR. HILKE) Oh. Can we -- can we fix that
24 on your computer?

25 MR. JIM DARNELL: Let me see. I can't, but

1 somebody can.

2 Q. (BY MR. HILKE) I don't know if you have a
3 mouse, but it should let you just like drag it up, and
4 if you pull it all the way to the top, it should just
5 become a line or something.

6 A. Somebody's here.

7 Q. Okay. Thank you.

8 THE WITNESS: It's just that he wants me to
9 read the statement, and it's cut off there.

10 THE HELPER: Oh, I see.

11 THE WITNESS: Yeah.

12 A. Okay.

13 Q. (BY MR. HILKE) Okay.

14 A. Okay. I need it scrolled up a little bit.

15 Q. Yeah. Do you mean scrolled down, like --

16 A. Yeah.

17 Q. -- the bottom of the page?

18 A. Yeah, where I can go to the bottom.

19 Q. Yeah. There you go.

20 A. Okay. That's good.

21 Q. Sorry.

22 A. Okay. I'm through with the first page.

23 Q. Okay. On to the second page. There we go.

24 A. If you could scroll up again.

25 Q. Yes.

1 A. Okay. Okay.

2 Q. Okay. Thank you.

3 Have you had a chance to fully review this
4 statement?

5 A. Yes.

6 Q. So Rodney shares a lot of information about the
7 shooting in this statement, doesn't he?

8 A. Yes.

9 Q. And he actually puts himself in the car at the
10 time that Robert England and Armando Lazo were shot and
11 killed; is that right?

12 A. Yes.

13 Q. And at the time this statement was taken,
14 Daniel Villegas had not been interrogated yet, right?

15 A. No.

16 Q. And so the investigating detectives didn't know
17 if Daniel Villegas would confess or pin the blame on
18 someone else, right?

19 A. Correct.

20 Q. So, I guess, would you agree that based on this
21 statement, Rodney Williams is now a potential suspect in
22 the case?

23 A. Yes.

24 MR. JIM DARNELL: Object, calls for
25 speculation.

1 Q. (BY MR. HILKE) And so as a potential suspect,
2 Rodney should be taken to get his juvenile warnings,
3 right?

4 A. If -- if you wanted the statement to be any
5 good, yeah, you would have to.

6 Q. Yeah. This -- this statement is no good
7 because he didn't get those warnings, right?

8 A. Yes. There's no confession from him.

9 Q. And yet, to your knowledge, Rodney's never
10 taken to get a statement that would be usable, right?

11 A. I don't know.

12 Q. Okay. Do you agree that Rodney should have
13 been taken to the juvenile officer and a magistrate once
14 he started talking about his involvement in the crime?

15 A. If -- if you were going to charge him, yes.

16 Q. Well, and are you aware that Rodney was charged
17 later that morning?

18 A. I -- I know he was charged later. I don't know
19 what was in the detective's mind at the time he took the
20 statement; that he maybe wanted to use him as a witness
21 or not because he took a witness statement.

22 Q. Yeah.

23 A. So I -- I can't really -- I can't really answer
24 that. I don't know what Detective Graves was -- would
25 have been thinking.

1 Q. But -- so not -- without putting yourself in
2 Detective Graves's head, to properly investigate -- to
3 properly take a statement like this from a juvenile
4 suspect, it was important to make sure that juvenile had
5 that war- -- their warnings, right?

6 MR. JIM DARNELL: Objection --

7 A. Yes.

8 MR. JIM DARNELL: -- speculation.

9 A. Yes. If you wanted to charge him, yes.
10 Otherwise, you wouldn't be able to.

11 Q. (BY MR. HILKE) And isn't it right that to even
12 preserve -- to even leave the option open of charging
13 Rodney Williams, it would have been important to go get
14 him his warnings?

15 A. Yes.

16 Q. Okay. And can you think of any reason why it
17 wouldn't be a good idea to give Rodney Williams his
18 warnings once he starts giving a statement like this?

19 A. No.

20 Q. So at the same time -- so I'm -- I am jumping
21 around a little bit. I want to talk about after Daniel
22 Villegas got his warnings and is now being questioned.
23 You were aware that Detective Graves had taken Marcos
24 Gonzalez to crimes against persons; is that right?

25 A. Yes.

1 Q. And you had typed up the arrest warrant for
2 Marcos Gonzalez, right?

3 A. The affidavit.

4 Q. Thank you so much.

5 You had typed up the affidavit for
6 Marcos --

7 A. Yes, sir.

8 Q. -- Gonzalez, right?

9 A. Yes, sir.

10 Q. And so part of -- part of the investigation
11 that was being conducted was to share details from the
12 Gonzalez interrogation and the Villegas interrogation,
13 right?

14 A. Yes.

15 Q. And who -- and you and Marquez and Ortega were
16 in one building with Daniel, right?

17 A. With Villegas?

18 Q. Yeah.

19 A. Yeah, and Link Brown.

20 Q. And Link Brown. So Link Brown was there after
21 you got back from taking Daniel to the magistrate the
22 first time?

23 A. I don't know. He may have left by then.

24 Q. Okay. And Detective Graves is in another
25 building with Marcos Gonzalez, right?

1 A. Yes.

2 Q. Who on your team, if anyone, was in
3 communication with Detective Graves?

4 A. From JIS, you're talking about?

5 Q. Yes, sir.

6 A. Well, I thought that I might get a call from
7 him, but he wouldn't need to do that because they both
8 would have had phones.

9 Q. When you say they both --

10 A. Now, he -- I mean, he might -- he might have
11 thought to call me to relay some information to Marquez,
12 but that never happened.

13 Q. I'm going to stop sharing now.

14 So your testimony is that Graves never
15 called the group at JIS to talk about what he had
16 learned from Gonzalez?

17 A. My testimony is that he didn't call me, but I
18 wasn't with Marquez, so I don't know if he ever called
19 Marquez.

20 Q. I see.

21 And are you aware that Marcos Gonzalez had
22 given a statement at 1:15 a.m.?

23 A. I -- I learned at some point that he gave a
24 statement, yes.

25 Q. And is that in -- would you have expected

1 Detective Graves to share the contents of Marcos's
2 statement with the team at JIS?

3 A. No. That -- I -- I didn't, no. I never had
4 contact with -- or Detective Graves never contacted me
5 while I was at JIS.

6 Q. I understand.

7 My -- my question is, would it have been
8 important for Detective Graves to share the information
9 he had learned as Al Marquez was interrogating Daniel
10 Villegas?

11 A. Yes, but he could have called Detective Marquez
12 directly.

13 Q. Understood. But it wasn't -- okay.

14 So did you see in Rodney's statement that
15 he refers to someone with the nickname of "Snoopy"?

16 A. I see it now. I -- and I reviewed the case a
17 lot, but there's a lot of statements that I -- I didn't
18 read. I'm just not interested in it.

19 Q. I'm just asking right now. You -- you saw that
20 Rodney mentioned a Snoopy as someone involved, right?

21 A. Yes, I saw that.

22 Q. And one -- so I've -- and you actually later
23 interviewed Fernando Lujan in this investigation, right?

24 A. Yes. I saw that.

25 Q. And --

1 A. I -- I don't -- I haven't reviewed that
2 statement. I don't know what it was about.

3 Q. Okay. And Fernando Lujan's nickname is
4 "Droopy"; is that right?

5 A. It might be. Again, I don't have -- I couldn't
6 find his statement, and I don't remember that part of
7 the investigation when I talked to him. I'd have to
8 look at the statement I took from him to see what --
9 what I needed.

10 Q. Sure.

11 Do you have any explanation for why Rodney
12 Williams and Marcos Gonzalez would refer to Fernando
13 Lujan using the wrong nickname, "Snoopy" instead of
14 "Droopy"?

15 A. No --

16 MR. JIM DARNELL: Object --

17 A. -- I don't.

18 MR. JIM DARNELL: -- to speculation.

19 Q. (BY MR. HILKE) And you're aware that Daniel
20 eventually gave a statement in this case, right, a
21 confession?

22 A. Yes.

23 Q. And do you have any explanation for why Daniel
24 is the first one to actually refer to Fernando Lujan as
25 "Droopy"?

1 A. Yeah. I didn't know that, no.

2 Q. Do you have any explanation for why that would
3 be the case?

4 A. No.

5 Q. Okay. Were you aware that Marcos eventually
6 gave a second statement?

7 A. Yes. I heard that he gave two statements.

8 Q. And in the second statement -- and is it
9 consistent with your memory that in the first statement,
10 Marcos says he got out of the car before the shooting,
11 and in the second statement, he says, "No, I was in the
12 car the whole time"?

13 A. I didn't know what the difference was.

14 Q. Okay. And would you have expected that after
15 Daniel gives his statement, that information would have
16 been given to Detective Graves?

17 MR. JIM DARNELL: Object to speculation.

18 A. I -- I don't know.

19 Q. (BY MR. HILKE) Okay. If there were
20 inconsistencies in the statements of two murder
21 suspects, would it be important to communicate them back
22 and forth so they can be addressed?

23 A. It might be. I -- like I said, I don't know if
24 they were in contact with each other. I just know that
25 I -- I never got any contact with Scott Graves that

1 night.

2 Q. I understand. And just to be clear, I'm not
3 asking about what your communications were.

4 A. Okay.

5 Q. I'm asking about your knowledge of how homicide
6 investigations are done.

7 A. Okay.

8 Q. And in a good homicide investigation, if you've
9 got two suspects and they're contradicting each other,
10 are you going to share that information between the
11 detectives interrogating the two suspects?

12 A. I -- I might. I -- I might not. I -- I
13 would -- I might just take the statement as he gives it
14 to me.

15 Q. Yeah. Why -- why wouldn't you share that
16 information?

17 A. My statement would stand alone on its own. I
18 mean, I would not call unless it was something real
19 significant. I mean, I -- I don't know how I would
20 know, from what you're asking me, if the names were
21 different, the nicknames were different. And if I did
22 know that, I don't know that I would contact Detective
23 Marquez if I was talking to Marcos Gonzalez. I don't
24 know if I would have done that.

25 Q. Well, would you consider it real significant if

1 they disagree on who was in the car at the time of the
2 murder?

3 A. Yes.

4 Q. And would you consider it real significant if
5 they disagreed on the name of the person in the car at
6 the time of the murder?

7 A. Yes. A name, like a first name and last name.
8 Nicknames, I don't know.

9 Q. Okay. And did -- did Detective Graves ever
10 come over to JIS while you were there?

11 A. No.

12 Q. And did you-all ever go to CAP to talk to
13 Detective Graves after he had taken Marcos Gonzalez
14 there?

15 A. No.

16 Q. So any information that Detective Graves would
17 have gotten that morning about what Daniel Villegas said
18 must have happened by phone call; is that right?

19 A. It would -- it would have been by phone call.

20 Q. Okay. Okay. So you talked about the L shape
21 at JIS earlier, right?

22 A. About what?

23 Q. That the JIS building is in the shape of an L.

24 A. Yes.

25 Q. Is that right?

1 A. Yes.

2 Q. And before you took Daniel to the magistrate
3 the first time, you and Daniel were at opposite corners
4 of the JIS building, right?

5 A. Yes.

6 Q. And were you both in the same places after
7 Dan- -- after you took Daniel back to give a statement?

8 A. Well, I was where -- the same place I was. I
9 don't know if Detective Marquez, when he went back to
10 the L, he went to the same office, but he would have
11 been in the same vicinity.

12 Q. Yeah. Were they far enough away that you
13 couldn't see them?

14 A. Yeah, I had no sight of them.

15 Q. And were they far enough away that you couldn't
16 hear them?

17 A. Yeah, I wouldn't have heard them.

18 Q. So what did you do while Marquez was
19 interrogating Daniel Villegas?

20 A. I wasn't doing anything. I was waiting for
21 them.

22 Q. And when was the next time you saw Daniel?

23 A. The next time would have been when we had to go
24 back to the judge for his second magistrate's warnings
25 to have the statement signed.

1 Q. Okay. And at that time, had -- had Al Marquez
2 completely finished typing up Daniel's statement?

3 A. Yes. It has to be complete before you go back
4 to the judge.

5 Q. And did you do anything to confirm that Daniel
6 understood the statement he had made?

7 A. Yeah. I mean, we're not -- we're not present
8 when he signs it, or anything, to say that he understood
9 it or anything. I think the judge asks him that. No, I
10 have no knowledge of that.

11 Q. Okay. What was -- what was Daniel's demeanor
12 as you -- as you were taking him over to the magistrate
13 the second time?

14 A. From what I remember, he was -- he was quiet
15 the whole time.

16 Q. All right. Do you recall him saying anything
17 between JIS and the magistrate?

18 A. No.

19 Q. Okay. And so then Daniel --

20 A. I -- I will say one thing. I mean, when we
21 were in the car, there was a part where he was directing
22 Marquez to a couple of houses. That's the only time I
23 ever heard him say anything, I think.

24 Q. Okay. So -- and was that -- that was after he
25 signed the statement in front of the magistrate?

1 A. Yes.

2 Q. And where did he -- what houses did he show
3 you?

4 A. I don't remember where they were, but I know
5 that we went to a house, and then Detective Marquez got
6 out, and he went to the house, and he came back. And
7 then Daniel Villegas directed him to another house, and
8 Detective Marquez got out of the car again, and he came
9 back, and he goes, "Okay. That's it." And then we went
10 to the juvenile probation department, where -- where we
11 left Daniel Villegas off at.

12 Q. Yeah.

13 Did -- so was Daniel ever alone with Al
14 Marquez after he finished signing his statement in front
15 of the judge?

16 A. No, because we left in the car together, we
17 went to the houses together, and we took him to JPD
18 together.

19 Q. And was Daniel sitting in the front seat or the
20 backseat of the car?

21 A. He was in the backseat.

22 Q. Okay. And so whatever Daniel said about the
23 houses he was showing you, both you and Al Marquez would
24 have heard it, right?

25 A. Yeah. I -- I imagine Marquez knew what it was

1 about. I didn't -- I didn't know what it was about.

2 Q. So was it your understanding that this is
3 something that they had talked about while Marquez was
4 taking his statement?

5 A. Yes.

6 Q. Okay. And you didn't know what it was about.

7 A. He just said he was going to -- he was going to
8 take a couple of houses of people that may have been
9 involved.

10 Q. Okay. Did you know who those people were?

11 A. No, I didn't -- I didn't know.

12 Q. Did you ask?

13 A. I don't -- I don't remember -- let me put it --
14 I don't remember actually if we talked about it to where
15 he gave me names of people or anything. I don't -- but
16 I don't remember any names or anything when we went to
17 the houses or anything.

18 Q. I understand. So sitting here today, you don't
19 remember what all you knew about the houses you were
20 going to; is that right?

21 A. No. No.

22 Q. And -- but you did later talk to Fernando Lujan
23 that morning, right?

24 A. Yeah. If there's a statement indicating that,
25 yes.

1 Q. And he was one of the people who had been
2 identified as being in the car, right?

3 A. If that's what the statement has. I -- I
4 forget statement -- I'm thinking what the statement has.
5 I'm not sure.

6 Q. It's okay.

7 Let me -- let me ask it this way: If you
8 were interviewing a murder suspect who had been
9 identified in some of these statements, you would want
10 to know what had been said about those sta- -- in those
11 statements, right?

12 A. Yes.

13 Q. And you would have gathered whatever
14 information had been collected so you could
15 appropriately confront this murder suspect.

16 A. Yes.

17 Q. Okay. So did you -- after taking Daniel to the
18 magistrate the second time, did you go anywhere else
19 before driving Daniel around?

20 A. No.

21 Q. Did you get permission from a juvenile intake
22 officer to drive Daniel around?

23 A. I didn't know at the time that -- that there
24 was permission.

25 Q. Okay. Did you later come to understand that

1 permission had been given?

2 A. Yes.

3 Q. Okay.

4 A. I think I read it somewhere when I was
5 reviewing the cases.

6 Q. Okay. But that wasn't anything that happened
7 while you were there with Daniel; is that right?

8 A. No.

9 Q. I would like to show you one other report. Let
10 me see. Okay. So I am now sharing Exhibit Number 14.
11 This is at J.S. 1904.

12 (Exhibit 14 marked.)

13 A. Okay.

14 Q. And I'm going to zoom in to the top here. So
15 zooming -- sorry. Give me one second. And let me zoom
16 up a little.

17 So do you recognize this as a supplement
18 report?

19 A. Yes.

20 Q. And the "re" line says that it's about the
21 written confession of a juvenile; is that right?

22 A. Yes.

23 Q. And then the juvenile is Danny Villegas?

24 A. Yes.

25 Q. Scrolling down to the bottom, this is Detective

1 Ortega's report, right?

2 A. Yes.

3 Q. And we can see from the bottom that he fini- --
4 that the approval on this report which Ortega gave came
5 at 4:03 a.m.; is that right?

6 A. That's -- that's what it says there.

7 Q. Uh-huh.

8 And the times that are -- that are down
9 here, those are entered automatically by the computer
10 program, right?

11 A. Yeah.

12 Q. Okay.

13 A. If that was the approval time. I mean,
14 sometimes the approval time is the next day. If he got
15 around to it that night and that's the approval time, he
16 did it that night --

17 Q. Sure.

18 A. -- that morning.

19 Q. In any case, we know it was finished no later
20 than 4:03 a.m. that morning, right?

21 A. Yes, it looks like it.

22 Q. So I'm -- looking at the bottom line in the
23 second-to-last sentence, do you see where it says, "The
24 juvenile showed Detective Marquez where the other
25 accomplices live"?

1 A. Okay.

2 Q. And then, "They were the homes of Droopy and
3 Popeye"?

4 A. Droopy and Popeye, okay.

5 Q. And then, "At 0400 hours, the juvenile was then
6 taken to JPD and turned over to their intake officer,
7 Aguilera"?

8 A. Okay. Yeah.

9 Q. So we know from this that before this report is
10 approved at 4:03 a.m., Danny has been turned over to
11 Aguilera; is that right?

12 A. Before then?

13 Q. Yeah. That -- because the report is finished
14 at 4:03 a.m., right?

15 A. I think -- see, I used to remember what those
16 numbers mean. I think that was the approval time.

17 Q. Okay. So --

18 A. I'm not sure. I -- you know, I'm not sure. I
19 forget what those times --

20 Q. Sure.

21 A. -- mean.

22 Q. Well, looking up to the next line, it says,
23 "Typed by: Officer 752," with a time of 3:44 a.m.,
24 right?

25 A. Yes.

1 Q. But that couldn't have been when he finished
2 the report because the report says, at 4:00 a.m., Daniel
3 was turned over to Aguilera, right?

4 MR. ALMANZAN: Objection, calls for
5 speculation and lack of foundation.

6 Q. (BY MR. HILKE) Go ahead.

7 A. I don't -- I don't know. I mean, 3:44 could be
8 the time he started. I'm not -- I'm not really sure.

9 Q. Sure.

10 A. I don't know if we had the starting time at the
11 front of the statement, at the beginning. But I just
12 forget what those times mean. I hate to say, yeah,
13 that's right. I just don't remember what those times
14 mean.

15 Q. Yeah, that's fine.

16 In any case, in this report, Ortega writes
17 that Daniel was turned over to Aguilera at 4:00 a.m.; is
18 that right?

19 A. I'm not sure. I -- I -- I would go by the time
20 that -- that he was logged in over there.

21 Q. Okay.

22 MR. JIM DARNELL: No, but the -- but the
23 end of the statement.

24 THE WITNESS: Oh, by the end of the
25 statement?

1 MR. JIM DARNELL: No. The last line in the
2 statement.

3 THE WITNESS: Oh, the last line? "Turned
4 over to"...

5 A. Can you scroll down a little bit?

6 Q. (BY MR. HILKE) Like this?

7 A. No. No. No. The other way.

8 Q. Yeah.

9 A. Okay. Right there.

10 Q. Yeah.

11 Let me -- let me ask you a different
12 question.

13 A. Okay. Yes. Yes.

14 Q. Yeah.

15 A. If that's what he documented, yeah, that's
16 right.

17 Q. Okay. And I'm going to stop --

18 A. And I just didn't have a time there.

19 Q. That's okay. I'm going to stop sharing this
20 exhibit now.

21 Did you just say that you would go by
22 whatever the juvenile log said as to where -- when
23 Daniel Villegas was taken there?

24 A. Yeah.

25 Q. And was it your experience that when a juvenile

1 is taken to JPD, that they have to be logged in right
2 away?

3 A. I remember there being a log. I don't know --
4 and it changed. I remember we used to log in at
5 juvenile because the officer wouldn't and -- and as far
6 as the officer, I don't know when they would have logged
7 in.

8 Q. Okay.

9 A. It would be better to go by the time of the JP
10 officer --

11 Q. Sure.

12 A. -- on his report.

13 Q. When -- it's important that someone -- well,
14 strike that.

15 As a detective taking a juvenile to JPD, do
16 you want to make sure that they're logged in when you
17 take them there?

18 A. Yes.

19 Q. And is that because that's a record that you've
20 handed this juvenile over to another person?

21 A. Yes. They -- if Aguilera was still on duty, it
22 would have been him.

23 Q. Yeah. And --

24 A. We would have released him on.

25 Q. And that way, there's no question about who

1 last had custody of the juvenile because it's -- it's
2 been logged at JPD; is that right?

3 A. That's correct.

4 Q. And so in your practice, would you want to make
5 sure a juvenile was logged in before you left him at
6 JPD?

7 A. Well, it wouldn't concern me because I know
8 that the probation officer would log in the -- the time
9 on his report when he received him.

10 Q. And if there's a -- if there is a discrepancy
11 between when Carlos Ortega says Daniel was dropped off
12 and when the juvenile log says he was dropped off, would
13 you have any explanation for that discrepancy?

14 A. No. That --

15 MR. JIM DARNELL: Object to speculation.

16 Go ahead.

17 A. No.

18 Q. (BY MR. HILKE) Okay. When you --

19 MR. HILKE: Do you guys need a break? I'm
20 about to move to another topic.

21 MR. JIM DARNELL: Yeah. Can we?

22 MR. HILKE: Yes, sir.

23 MR. JIM DARNELL: How much longer have you
24 got? Do you know?

25 THE VIDEO TECHNICIAN: Let me get us off

1 the record. We're off the record. The time is 3:43.

2 (Break taken.)

3 THE VIDEO TECHNICIAN: We are back on the
4 record for the deposition of Earl Arbogast being
5 conducted by videoconference. My name is Sydney Little.
6 Today is June 30th, 2022. The time is 3:59.

7 Q. (BY MR. HILKE) All right. Sir, you -- you
8 spoke with Fernando Lo- -- Fernando Lujan on the -- on
9 the same morning that you were with Daniel Villegas; is
10 that right?

11 A. Yeah, I may have. Like I said, I don't have
12 that statement with me.

13 Q. Sure.

14 And at the time you did that -- well, you
15 know, I'm just going to go ahead and share another
16 exhibit. This will be Exhibit Number 15 at DA-34-616.

17 (Exhibit 15 marked.)

18 Q. I'm going to go ahead and scroll up. So do you
19 recognize this as a statement given to Detective Earl
20 Arbogast?

21 A. Yes.

22 Q. The person giving that statement is Fernando
23 Lujan?

24 A. Yes.

25 Q. And his date of birth is October 2nd, 1977?

1 A. Yes.

2 Q. That would have made him 15 years old at the
3 time?

4 A. Yes.

5 Q. And that would have been some of the first
6 information you took from him talking to him, right?

7 A. From him, yes.

8 Q. Scrolling down, at the bottom of this page, you
9 were the reporting officer here; is that right?

10 A. Yes. I show I did this statement.

11 Q. And it looks like you had approved this
12 statement at 6:28 a.m. that morning. Is that right?

13 A. Yeah. Yes.

14 Q. Okay.

15 A. Can I -- yeah. Yes.

16 Q. So I'm going to -- I'm going to scroll back up
17 a little bit. Actually, before I -- before I direct you
18 to the statement, let me just ask you a question.

19 A. Okay.

20 Q. At the time you talked to Fernando Lujan,
21 Daniel Villegas, Rodney Williams, and Marcos Gonzalez
22 had all placed him in the car at the night of the
23 murder, right?

24 A. Yes. I know Marcos and Daniel had.

25 Q. Okay.

1 A. I was unaware about the -- Rodney.

2 Q. So going into this conversation, you know
3 you're talking to a suspect, right?

4 A. Yes. I -- I'm not sure what information I had
5 at that time.

6 Q. Okay.

7 A. Let me see.

8 Q. Well, I -- I will go over the statement.

9 A. Okay.

10 Q. But I'm -- let me put it this way.

11 A. Go ahead.

12 Q. If multiple suspects had all said that Fernando
13 Lujan was in the car with him the night of the murder,
14 you would have made sure to find that out before
15 interviewing this person connected to the murder, right?

16 A. Could you say that again?

17 Q. Yeah.

18 If multiple suspects had all said, "This is
19 a person who was in the car the night of the murder,"
20 you would have made sure to get that information before
21 you interview a new person in this investigation, right?

22 A. Yes. Yes.

23 Q. And -- and the reason for talking to him would
24 have been to find out his involvement; is that right?

25 A. Yes.

1 Q. And so he needed to be taken to a juvenile
2 officer before you asked him about the crime, right?

3 MR. ALMANZAN: Objection, calls for
4 speculation and foundation.

5 A. I -- I -- I can tell you that when we picked up
6 juveniles, we would try to notify the parent, but we
7 wouldn't go to the juvenile -- to the JIS. We -- we
8 took statements all the time in the CAP office. So that
9 was just something that we did as a normal course.

10 Q. (BY MR. HILKE) Sure. You -- you could take a
11 statement of a witness without necessarily taking them
12 to get their warnings, right?

13 A. Right.

14 Q. But Fernando Lujan is actually a suspect in
15 this murder, right?

16 A. I -- I'm not sure because you get a lot of
17 names and a lot of people, and you want to -- you want
18 to pull them in to see what they know, and you're going
19 to find out whether they are a suspect or whether
20 they're involved or not. If they start implicating
21 themselves, then you start the process that Daniel
22 Villegas went through.

23 There's a lot of allegations in a case
24 and -- and -- and you pull in witnesses, and a lot of
25 times you find out that they are suspects.

1 Q. Okay. But this isn't just allegations. Two
2 people who confessed both said that this man -- this boy
3 was in the car with them at the time of the murder,
4 right?

5 A. I'm not sure what information I had then. I...

6 Q. Are you saying it's possible that even though
7 Daniel Villegas and Marcos Gonzalez both said this boy
8 was with them in the car, you didn't know about either
9 of those statements when you talked to Fernando Lujan?

10 A. What I'm saying is I think -- I think the --
11 I'm sorry. I didn't let you finish, but what I'm saying
12 is that I may have just known that Detective Marquez
13 said, "We need to pick up these guys and find out if
14 they're involved or not." I don't remember that I
15 specifically knew what was in Rodney's statement and
16 Daniel Villegas' statement.

17 Q. Okay. But you're the one who's actually asking
18 the questions to Fernando Lujan, right?

19 A. Right. So I'll call him in. He was taken in
20 as a witness. And then if he involves himself as a
21 suspect, he'll go through the process.

22 Q. Can -- can you think of any reason you wouldn't
23 have asked what the two people who had just given
24 confessions had said about Fernando Lujan?

25 A. I would -- I don't know what happened, but I --

1 I'm just giving you a -- an example. If Detective
2 Marquez told me, "We need to interview two guys and see
3 their involvement," then that's -- that's -- that's the
4 way it would have been done.

5 Q. So you think it's -- sitting here today, you
6 think it's possible that Detective Marquez told you to
7 interview this murder suspect without you having any
8 information about what other statements had been made
9 about him?

10 A. I can tell you --

11 MR. JIM DARNELL: Objection, speculation.

12 A. I can tell you I never read Villegas'
13 statement, and I never read Rodney's statement until
14 recently, so I'm assuming -- and I don't know. I -- I
15 don't remember -- Marquez may have briefed me that we
16 need to pull in these guys and see if they were
17 involved.

18 Q. (BY MR. HILKE) It would have been incredibly
19 irresponsible for Marquez to tell you to interview a
20 suspect without who -- without briefing you on his
21 potential involvement, right?

22 A. Well, I'm assuming that he would have told me,
23 too, that these were the guys that -- that were
24 involved, as far as to the houses that were picked out
25 that night, maybe.

1 MR. JIM DARNELL: Object --

2 A. I'm not --

3 MR. JIM DARNELL: Object to speculation.

4 A. I -- I just don't remember.

5 Q. (BY MR. HILKE) Yeah.

6 A. I don't remember that that was the case.

7 MR. JIM DARNELL: Don't guess.

8 Q. (BY MR. HILKE) But sitting -- sitting here
9 today, you don't have any reason to doubt that you knew
10 that Fernando Lujan was a suspect to the shooting,
11 right?

12 MR. JIM DARNELL: Object to speculation.

13 A. I -- I don't know for sure.

14 Q. (BY MR. HILKE) Well, sitting here today, do
15 you have any reason to doubt that you knew Fernando
16 Lujan was a suspect?

17 A. If you let me read his statement, I mean,
18 I'll -- I'll see where it goes. I'm not --

19 Q. That's --

20 A. I'm not really sure without looking at his
21 statement.

22 Q. Yeah, let's -- let's go to the statement. We
23 are on the sort of first section of his statement. Go
24 ahead and read it, and let me know when you're done.

25 A. Okay.

1 Could you scroll to the bottom?

2 Q. Yes.

3 A. Okay.

4 Q. I'm -- I'm going to stop sharing this exhibit
5 for a moment here.

6 So my -- and did you have a chance to
7 review the statement?

8 A. Yes, I did.

9 Q. Okay. So it was -- is it correct that your
10 practice at the El Paso Police Department was that you
11 could not ask a juvenile suspect about a crime until
12 they got their warnings?

13 A. Yeah. If they were a suspect, yes.

14 Q. Okay. And someone that -- and a juvenile who's
15 been identified by other people who have -- who have
16 confessed to a crime as being in the car for a drive-by
17 shooting, that juvenile is a suspect, right?

18 A. Yes. He -- he -- he would be someone that you
19 would pull in and -- to see if you could make him as a
20 suspect, yes.

21 Q. And so when you asked Fernando Lujan about what
22 happened without him getting his warnings, that was in
23 violation of that practice, right?

24 A. Well, again, I don't --

25 MR. ALMANZAN: Objection, calls for

1 speculation.

2 A. What I'm trying to tell you is I don't know the
3 circumstances that I interviewed Fernando Lujan on.
4 Detective Marquez may have just told me to interview him
5 to see if he was involved, and that's why I did it on a
6 witness statement. And when I took that witness
7 statement, he never implicated himself.

8 Q. (BY MR. HILKE) Okay.

9 A. So that statement was taken, and then it was
10 given to Detective Marquez.

11 Q. So it is your testimony that -- that you may
12 not have ta- -- you may not have gotten Fernando Lujan
13 his warnings because you did not know at the time that
14 he was a suspect?

15 A. Yes. I mean, he never implicated himself as a
16 suspect, and everything that I took down in that
17 statement was what he did. He never implicated himself.

18 Q. But you couldn't have known that before you had
19 taken his statement, could you have?

20 A. I couldn't have known what?

21 Q. You didn't know what he was going to tell you
22 before you talked to him, right?

23 A. No. That was the reason for, you know, taking
24 a witness statement. I -- to see if he was a suspect or
25 a witness.

1 Q. But if he was a suspect, then it would have
2 been improper to talk to him until he had gotten his
3 warnings, right?

4 A. That's correct.

5 Q. And so do you have any explanation for why you
6 didn't get him his warnings other than you just -- you
7 didn't know that he had been implicated by the other --
8 other people in this case?

9 A. Well, because I interviewed him, and he didn't
10 implicate himself. If he had had any involvement, I
11 would have started the process with Danny, if I'm
12 understanding you correctly.

13 Q. But, sir, that -- that wasn't my question. My
14 question is -- well, let me ask you a better question.

15 If you had known at the time that -- that
16 even one other juvenile who had confessed to a drive-by
17 had said that Fernando Lujan was also in the car during
18 the drive-by, would it have been appropriate to question
19 that other juvenile without giving him his warnings?

20 A. No.

21 Q. Okay. And so do you have any explanation for
22 why you didn't get Fernie -- Fernando Lujan his warnings
23 other than you didn't know that anyone else had
24 implicated him at that time?

25 A. Well, I may not have known, and I don't know --

1 I don't recall why Dete- -- I mean, exactly what
2 Detective Marquez had told me on what points to
3 interview him on. I don't remember.

4 Q. I understand.

5 A. I was just to take a statement.

6 Q. And other than that, you may not have known, do
7 you have any other explanation for why you didn't give
8 him his warnings?

9 A. No.

10 Q. Okay. And looking back on the investigation,
11 do you think it's plausible that you would have
12 interviewed Fernando Lujan without knowing what the
13 people who had given confessions had said about him?

14 MR. JIM DARNELL: Object to speculation.

15 A. Yeah, I don't remember what I -- I -- I knew
16 about Fernando Lujan, but I -- I just don't remember.

17 Q. (BY MR. HILKE) I understand, but Al Marquez
18 and Scott Graves, you testified earlier that you never
19 had any problem communicating with them, right?

20 A. Yeah. I could communicate with them.

21 Q. And they were good detectives, right?

22 A. Uh-huh.

23 Q. And you were a good detective.

24 A. Yes.

25 Q. And so my question is, in all your experience

1 investigating homicides and criminal investigations,
2 would you send -- like does it make any sense to you
3 that you would be questioning this murder suspect
4 without knowing what others had said about him?

5 A. My answer to that would be is if Detective
6 Marquez had said, "This guy's involved in the shooting,
7 he was implicated in two statements, and I want to make
8 sure that we get a confession from him," I wouldn't have
9 taken a witness statement from him in the first place.

10 Q. And -- and my -- my question is, I guess, can
11 you -- can you think of any reason why that information
12 wouldn't have come to you before you interviewed a
13 murder suspect in this case?

14 A. No. I -- I don't remember what information was
15 rele- -- relayed, and I don't know.

16 Q. I understand you don't remember.

17 Do you have any explanation for why that
18 information may not have come to you?

19 A. No.

20 Q. Okay. And was that -- I'm going to go back to
21 the statement now so we can reference it sort of as
22 needed. Yeah, I'm sharing Exhibit 15 again here. Yeah.

23 And let me actually ask it to you this way:
24 Do you have any independent memory of any other
25 detectives being with you when you talked to Fernando

1 Lujan?

2 A. No.

3 Q. Okay. And there was no juvenile officer
4 present in your interactions with Fernando Lujan; is
5 that right?

6 A. There was not.

7 Q. Okay. And did you agree with Alfonso Marquez
8 to pin this murder on Daniel Villegas?

9 A. What was the question?

10 Q. Did you agree with Alfonso Marquez, with Al
11 Marquez, to pin this murder on Daniel Villegas?

12 MR. ALMANZAN: Objection, argumentative.

13 MR. JIM DARNELL: Go ahead and answer.

14 A. Well, with the information that we had at the
15 time right -- right then and there, yes, I would have
16 agreed with him.

17 Q. (BY MR. HILKE) When did you make that
18 agreement with Al Marquez?

19 A. Agreement, I -- I'm sorry. I misunderstood
20 you, then. I didn't make an agreement. Would I agree
21 with him on his decision? At that point in time --

22 MR. JIM DARNELL: Let him reask the
23 question.

24 A. Yeah. Can you reask it again?

25 Q. (BY MR. HILKE) Sure. Right.

1 My question was, did you and Al Marquez
2 agree to pin this murder on Daniel Villegas?

3 A. Oh, no.

4 Q. And did you -- before you talked to Fernando
5 Lujan, did you and Al Marquez agree to try to get a
6 statement implicating Daniel Villegas from Fernando
7 Lujan?

8 A. No.

9 Q. So going way back to the initial shooting, the
10 first statement you took in this case was -- I'm going
11 to stop sharing.

12 The first statement you took was from Juan
13 Medina, right?

14 A. Was from what?

15 MR. JIM DARNELL: You just broke up.
16 Say -- could you say that again?

17 MR. HILKE: Oh, no problem.

18 Q. (BY MR. HILKE) The first statement you took
19 was from Juan Medina, right?

20 A. Yes. Yes.

21 Q. And did you take him to crimes against persons
22 to take that statement?

23 A. Yes, I did.

24 Q. And there was another boy -- there was another
25 young man, Jesse Hernandez, who was the other survivor

1 from the shooting, right?

2 A. Yes.

3 Q. Did you see Jesse at the crimes against persons
4 station that morning?

5 A. Yes.

6 Q. And did either boys -- what were -- what was
7 Juan Medina's demeanor at the station?

8 A. Well, he was -- he was kind of shaken up.

9 Q. Yeah? He seemed -- did he seem scared?

10 A. Yeah, he -- you know, well, he seemed shaken
11 up. I mean, there's degrees to what you're saying, but
12 he -- he was shaken up would be my assessment.

13 Q. What did you notice about him that made you
14 think he was shaken up?

15 A. Well, he was just a little bit nervous.

16 Q. Okay.

17 A. You know, you could tell that he was -- yeah,
18 that he had gone through something.

19 Q. Yeah.

20 And when you say "just a little bit
21 nervous," was he just a little nervous, or was he
22 more -- was he -- how nervous was he, I guess is my
23 question?

24 A. Well, I'll tell you what I remember. What I
25 remember is that I could tell that the shooting had

1 affected him, his -- his demeanor. To put a level on
2 the degree, I really don't -- don't remember.

3 Q. What -- what did you notice about -- I'm sorry.
4 Go ahead.

5 A. The best thing I can say is he was a little
6 shaken up.

7 Q. What did you notice about Jesse Hernandez's
8 demeanor?

9 A. I don't think I saw Jesse Hernandez. I know he
10 was taken to CAP, and I think Detective Marquez took a
11 statement from him.

12 Q. Got it.

13 So you didn't interact with Jesse Hernandez
14 that morning?

15 A. No. I took Juan Medina in my car and -- and Al
16 Marquez took Jesse Hernandez in his car.

17 Q. Juan Medina had not -- he didn't actually see
18 the shooter, right?

19 A. No, I don't think he did.

20 Q. Okay. And is it consistent with your memory
21 that he described the car as a goldish Monte Carlo?

22 A. Yes.

23 Q. And the only thing he heard anyone in the car
24 say was just "come here," right?

25 A. Yes.

1 Q. And he didn't mention any potential gang
2 connection to the shooting, did he?

3 A. No.

4 Q. And that's -- and he didn't mention any motive
5 someone would have for shooting at them all, did he?

6 A. Not then, that I remember, no.

7 Q. And these were the victims and the survivors --
8 they were young, right? They were teenagers?

9 A. Yes, they were.

10 Q. And so teenage boys being shot at in a
11 drive-by, did you assume there might be some gang
12 involvement?

13 A. I mean, it's always open to that. We -- we do
14 have a lot of gangs in the northeast, but, again, it's
15 what you said earlier. You try and keep an open mind.

16 Q. Right.

17 So -- so you would have asked Juan about
18 any potential gang ties to the shooting, right?

19 A. I don't think I did.

20 Q. Why didn't you ask him about potential gang
21 ties?

22 A. Because I just -- I -- from what I remember, I
23 just asked him the specifics on what happened that night
24 at the shooting. And I also tried to identify the car
25 by showing him pages of vehicles.

1 Q. Was there any reason you didn't want to know if
2 he thought there was some gang connection?

3 A. I don't remember asking that. I don't know
4 why.

5 Q. Okay. All right. Where in crimes against
6 persons did you interview Juan Medina?

7 A. It would have been at my cubicle.

8 Q. Got it.

9 And so while you were interviewing Juan
10 Medina, was Al Marquez interviewing Jesse Hernandez
11 diagonal across from you?

12 A. Yes.

13 Q. Okay. At any point, did you hear anyone yell
14 while those statements were being taken?

15 A. Did I -- what?

16 Q. Did you hear anyone yell?

17 A. Oh, no.

18 Q. Did you hear anyone make threats?

19 A. No.

20 Q. Did you hear anyone make accusations?

21 A. No.

22 Q. Did you hear anyone raise their voice?

23 A. No.

24 Q. Did you hear anyone say that either Jesse or
25 Juan would be raped in jail if they didn't confess?

1 A. No.

2 Q. Okay. So did Juan explain to you where he had
3 walked from, where he was coming from when the shooting
4 happened?

5 A. Yeah. He was -- he was going to ride back with
6 a friend, but the friend never showed back at the
7 party -- party, and I think he was going to walk to a
8 friend's house, from what I remember. I'm not sure.

9 Q. Okay. And did he tell you where he was
10 walk- -- what his destination was?

11 A. It -- it was somewhere else that -- another
12 person's residence, I think, but I'm not -- I'm not
13 completely sure on that.

14 Q. And did you -- did you later become aware
15 that -- or did you become aware at any time that those
16 boys had taken the long way home; that Transmountain was
17 not the most direct way for them to get to their
18 destination?

19 A. Yeah. They were -- oh, yeah. Because I think
20 I remember now that they were going to go to 5700 -- or
21 to some apartments, Village Green Apartments, yeah. I
22 didn't know that.

23 Q. Okay. So are you aware that Juan Medina
24 testified in Daniel's criminal trial that he and the
25 others took the long way home to avoid the gang

1 territory of Los Midnight Locos?

2 A. No, I wasn't aware of that.

3 Q. And as far as you know, was Juan Medina ever
4 asked about what the potential gang connections were?

5 A. It wasn't in his statement, so I probably
6 didn't ask.

7 Q. Okay. And -- okay. And if -- if Juan had told
8 you anything about a gang connection, you would have
9 written that down; is that right?

10 A. Yes. It would have been in his statement.

11 Q. And even if he said he didn't know of any gang
12 connection, you would have written down that he didn't
13 know of any gang connection, right?

14 A. Yes.

15 Q. Before April 21 -- well, strike that.

16 Before you picked up Daniel Villegas, were
17 you aware of any connection between the Varrio Northeast
18 gang and the Lazo/England murder?

19 A. No, I -- I wasn't.

20 Q. And if that connection -- if a connection
21 between Varrio Northeast and the murders had come up, it
22 would have been important to document that, right?

23 A. Yes.

24 Q. And it would have been -- been important to
25 write down how that connection was discovered, right?

1 A. Yes.

2 Q. So you also -- between when you talked to Juan
3 and when you picked up Daniel, you -- you actually went
4 out to New Mexico on this case, right?

5 A. Yes.

6 Q. And what's the first thing you remember of
7 becoming involved in the trip to New Mexico?

8 A. We had gone to New Mexico because there was
9 information that a couple of kids were admi- --
10 confessing to the shooting, so we had gone over there
11 to, you know, get their statements and see if they were
12 involved.

13 Q. Yeah. And who -- who did you go with to
14 New Mexico?

15 A. On that one, I went with Al Marquez.

16 Q. Okay. And was it just the two of you from
17 El Paso?

18 A. No. We had the gang task force. And I'm not
19 all -- I know we had the gang task force, and I'm not
20 sure the -- about the other detectives who went.

21 Q. Okay. And do you recall that before a
22 statement was -- and the two boys who were suspects, do
23 you know how to pronounce his name? It's like Jacob
24 Jauregui or something.

25 A. Oh, Jauregui.

1 Q. Jauregui, yes.

2 Do you recall, before a statement was taken
3 from Michael Johnston or Jacob Jauregui, a statement was
4 taken from a Robert Hall?

5 A. I believe there was.

6 Q. Okay. And were you present for the statement
7 from Robert Hall?

8 A. No.

9 Q. Okay.

10 A. Not that I remember.

11 Q. So I'm going to pull up an exhibit. There we
12 go. Okay. I am now sharing my screen. This is Exhibit
13 Number 16. It's at DA-34-625.

14 (Exhibit 16 marked.)

15 Q. So this is a handwritten statement, right?

16 A. Yes.

17 Q. And I believe that Al Marquez has testified
18 that this is his handwriting. Does this appear to be Al
19 Marquez's handwriting to you?

20 A. I don't recognize it.

21 Q. Okay. Scrolling -- I'm going to scroll to
22 the -- and I forget if I said this. Yeah, I gave the
23 Bates. I'm going to scroll down to page 5 of this
24 document.

25 Do you see some signatures at the bottom of

1 this page?

2 A. Do I see what?

3 Q. Some signatures at the bottom of this page.

4 A. No.

5 Q. Okay. Zooming in a little, do you see some
6 signatures now?

7 A. No.

8 Q. Huh.

9 Do you see anything on your screen?

10 A. Oh, there -- there -- you got it there.

11 Q. Okay.

12 A. Okay. Yeah, I see the signatures.

13 Q. There are two signatures on the left next to
14 "witnesses," right?

15 A. Yes.

16 Q. Do you recognize those signatures?

17 A. No.

18 Q. Okay. Do you know who badge number 824 is?

19 A. No.

20 Q. All right. I'm going to scroll back up to the
21 top of the document, and let me zoom in here. Looking
22 at the first paragraph, I just want to point you to --
23 do you see where it says, "Right now, I am at Gadsden
24 Junior High, where I am giving the statement to
25 Detective Alfonso Marquez of the El Paso Police

1 Department"?

2 A. Yes. Yes.

3 Q. Did you go with Al Marquez to the junior high
4 school?

5 A. I don't remember going with him to the high
6 school. I just remember going with him into New Mexico
7 to pick up the two kids that were bragging.

8 Q. Got it.

9 So Hall's statement isn't part of what you
10 remember from this case; is that right?

11 A. Yes.

12 Q. Okay. We -- I'm going to stop sharing this
13 document now.

14 Do you remember whether it was public
15 information that the two survivors of the shooting had
16 been chased by a car and run away to find a phone?

17 A. After the shooting?

18 Q. Yes, sir.

19 A. Yeah. I knew that they ran away and that they
20 hid while --

21 MR. JIM DARNELL: He was asking, was it
22 public information?

23 A. Oh, was it public information?

24 Q. (BY MR. HILKE) Yeah.

25 A. I -- I don't know.

1 Q. Okay. And if that information wasn't public,
2 it would have been important to be careful with
3 releasing that information, right?

4 A. Yes.

5 Q. And if Robert Hall had said that Mike Johnston
6 gave him information you knew to be nonpublic about the
7 crime, that would have tended to indicate that Michael
8 Johnston knew something about the crime, right?

9 A. If he knew something --

10 MR. JIM DARNELL: Object, spec- --

11 A. -- that wasn't released, yes.

12 MR. JIM DARNELL: Object, speculation.

13 Q. (BY MR. HILKE) And if Michael Johnston had
14 told Robert Hall that he committed the murder and then
15 threatened to kill Robert Hall if he told anyone, that
16 would have tended to indicate his involvement; is that
17 fair?

18 A. Well, yes.

19 Q. Okay. So tell me about -- do you remember
20 where Michael Johnston was picked up?

21 A. If I'm remembering the names correctly, I think
22 both the juveniles were picked up in New Mexico.

23 Q. Yeah. Do you remember where in New Mexico,
24 like what -- what kind of location?

25 A. We had gone to, I believe, the sheriff's

1 department.

2 Q. Okay.

3 A. And to ensure their rights, we had to go
4 through a magistrate, I remember, and we contacted the
5 parents, and everything was agreed for us to bring them
6 back.

7 Q. Got it.

8 So you had obtained parental permission to
9 bring them back; is that right?

10 A. Yes.

11 Q. And it would have been important to document
12 that parental permission, right?

13 A. Yes.

14 Q. And did -- to your knowledge, were Johnston and
15 Jauregui told that they could either go to jail in
16 New Mexico or come to El Paso and try to work it out?

17 A. No, I'm not aware of that.

18 Q. Okay. Are you aware of them being threatened
19 in any way that they would be jailed if they did not
20 come with you?

21 A. No.

22 Q. And it would have been totally inappropriate to
23 threaten them with jail if they didn't come with you,
24 right?

25 A. Yes, it would.

1 Q. And so you mentioned that Johnston and Jauregui
2 were both given magistrate warnings, right?

3 A. I'm not sure. I don't think I did either
4 interview.

5 Q. Okay. Yeah. So -- yeah. Give me -- give me
6 one second, please. I'm going to -- well, give me one
7 second, actually.

8 Okay. So sitting here today, you don't
9 know if they were taken to a magistrate or not?

10 A. Yeah, I don't remember.

11 Q. Okay. And were you involved in either of their
12 interviews?

13 A. I don't think I was. I don't remember
14 interviewing either one.

15 Q. Did either of them ride with you back to --
16 back to El Paso?

17 A. I don't -- back to Dona Ana, you mean?

18 Q. Or -- sorry. After -- after you took them from
19 New Mexico, where did you bring them?

20 A. After we picked them up, and then I didn't
21 hear.

22 Q. Where did you bring them after you picked them
23 up?

24 A. Shoot, I don't -- I don't -- I don't remember.

25 Q. Okay. I'm going to show you an exhibit you've

1 seen before. Okay.

2 Okay. So this is Exhibit Number 9 again.

3 This is your report dated May 6, 1993. I'm going to
4 scroll down, and we're on the second page. Looking at
5 this point on -- do you see where it says, "On 4-15-93,
6 Detective Marquez took a statement from Robert Hall"?

7 A. Yes.

8 Q. And then it says "who stated that a Jacob
9 Jauregui and Mike Johnston of Chaparral, New Mexico,
10 were bragging about doing the shooting"?

11 A. Yes.

12 Q. And it says, "Both of these subjects were taken
13 to JPD and interviewed, but it became evident that they
14 did not have knowledge of certain aspects of the case
15 that the killers would have known"?

16 A. Yes.

17 Q. So from what's documented, it isn't -- it isn't
18 mentioned anywhere in your state- -- in your report that
19 they were given warnings by a magistrate; is that right?

20 A. No.

21 Q. And -- and you don't recall being involved in
22 the interview of Jacob or the interview of Mike; is that
23 right?

24 A. No.

25 Q. Okay. And to your knowledge, was it documented

1 anywhere why they were ruled out as suspects, other than
2 that they did not have knowledge of certain aspects of
3 the case that the killers would have known?

4 A. I don't know the reason, no.

5 Q. Yeah.

6 And would it have been important to
7 document why these two suspects were ruled out?

8 A. Yes.

9 Q. And would it have been important to give more
10 detail than just there were some details they didn't
11 know?

12 A. Yes.

13 Q. And -- okay. And do you have any explanation
14 for any lack of documentation on that point?

15 A. No.

16 Q. And I'm going to stop sharing this now again.

17 And at this point in the investigation, you
18 didn't have any other active leads, did you?

19 A. I'm not sure. It's -- like I said, I was -- I
20 was in part of this and part of that. I wasn't
21 continuing in keeping me apprised of the case. I
22 wasn't -- wasn't there the whole time.

23 Q. And do you have any memory of what details Mike
24 or Jacob didn't know about the shooting?

25 A. That who wouldn't have known?

1 Q. Mike and Jacob, Jauregui and Johnston.

2 A. No.

3 Q. Okay. Did you subsequently talk to a Douglas
4 Bosanko?

5 A. That name is familiar, but I don't know from
6 where.

7 Q. Yeah. Let me -- I'm going to share his
8 statement with you now.

9 A. Okay.

10 Q. Here we go. Okay. So I'm now sharing -- this
11 is Exhibit 17. It's City 267.

12 (Exhibit 17 marked.)

13 Q. I'm going to scroll in here. This is a witness
14 statement dated April 16, 1993, right?

15 A. Yes.

16 Q. And this statement was given voluntarily to
17 you, Earl Arbogast, by Douglas Bosanko?

18 A. Yes.

19 Q. And -- give me one second.

20 Okay. So have you had a chance to review
21 this statement?

22 A. No.

23 Q. Do you want to take a minute and go ahead and
24 read it now?

25 A. Yes. Can you scroll down a little bit?

1 Q. Like this?

2 A. Yeah.

3 Q. Great.

4 A. A little bit more.

5 Q. Sure.

6 A. Okay. Right there.

7 Q. Good.

8 A. Can you scroll up?

9 Q. Yes.

10 A. Right there. A little bit down.

11 Q. Like this?

12 A. Yeah, right there.

13 Q. Great.

14 A. Okay.

15 Q. Okay. So according to this statement, Douglas
16 Bosanko was Robert Hall's brother-in-law, right?

17 A. Yes.

18 Q. And Robert Hall was the person who had
19 originally pointed to Mike Johnston as a potential
20 suspect, right?

21 A. Yes.

22 Q. And so even after Mike Johnston and Jacob
23 Jauregui had -- had -- after they had -- even after they
24 had been interviewed, in this investigation, you were
25 still trying to close a loop by talking to -- by talking

1 to Douglas Bosanko, right?

2 A. Yes. I think he voluntarily came in.

3 Q. Yeah. And -- and so the purpose for this
4 interview was to see if it shed any light on Mike
5 Johnston's involvement, right?

6 A. Yes. And I -- it was just information.

7 Q. Yeah. And -- and specifically information
8 about what Mike Johnston had told Robert Hall, right?

9 A. Yes.

10 Q. So in -- as you were getting ready to talk to
11 Douglas Bosanko, you -- you would have wanted to know
12 what his brother-in-law, Robert Hall, had said in his
13 statement, right?

14 I don't remember a call when his statement
15 was taken or at what point -- point I knew anything --

16 MR. ALMANZAN: Did you get the file-stamped
17 copy of that UMIC New Mexico filing yet?

18 UNIDENTIFIED SPEAKER: Si.

19 MR. ALMANZAN: Oh, okay. Can you PDF it to
20 me --

21 MR. HILKE: Hey, Andy, you're -- you're not
22 muted.

23 MR. ALMANZAN: Oh, sorry. Sorry, guys.

24 MR. HILKE: That's -- you're fine.

25 Q. (BY MR. HILKE) So -- oh, go ahead.

1 A. Go ahead.

2 Q. I was just going to ask: So this -- this
3 statement was taken April 16, 1993.

4 A. Yes.

5 Q. And I'm going to represent to you that the
6 statement from his brother-in-law, Robert Hall, was
7 taken the day before.

8 A. Yeah.

9 Q. And from what you just testified, it was taken
10 while you and Al Marquez were up in New Mexico. I know
11 you weren't there for Robert Hall's statement, but you
12 knew that it had been taken, right?

13 A. Yes.

14 Q. And so if you're talking to Douglas Bosanko
15 about what Robert Hall told him, you would have wanted
16 to know what Robert Hall had already said, right?

17 A. I -- I wasn't aware of it. I'm -- I'm not sure
18 that I knew that Robert Hall -- what he said in his
19 statement. I may have known at that point, and I don't
20 remember that they had already been excluded. So this
21 statement would have just been taken for information.
22 He came in voluntarily. He wanted to give his
23 statement, so we took it.

24 Q. So are you saying that you would have been
25 comfortable taking this statement from Douglas Bosanko

1 even if you had no idea what Robert Hall had already
2 said?

3 A. No, I'm not saying that. What I'm saying is
4 I'm not -- I may have known that they had already been
5 excluded. I don't know if that was the case.

6 Q. Well, and my question is not about what you
7 knew at the time. My question is about your practice in
8 investigating homicides.

9 When investigating a homicide, if -- well,
10 let me ask this: In investigating a homicide, sometimes
11 you talk to multiple people who have connections to one
12 another, right?

13 A. Yes.

14 Q. Like one of your first statements, you talked
15 to Ms. Vinson, a young woman, and then you talked to
16 Terrance -- or, subsequently, Graves talked to Terrance
17 Farrar, who -- who Ms. Vinson had said -- had -- had
18 said something about the guilty party to the shooting,
19 right?

20 A. Yes.

21 Q. And so in that situation, for Graves to have an
22 intelligent conversation with this person who supposedly
23 knows who the suspect is, who -- who the shooter is, you
24 want to know what the other connected people have
25 already said, right?

1 A. Yes.

2 Q. Because then you can know what to follow up on
3 or if there are contradictions or things like that,
4 right?

5 A. Yes.

6 Q. So my only question is, you know, not -- not,
7 you know, what did you know at the time, but in talking
8 to Douglas Bosanko, would you want -- would you have
9 wanted to have that same kind of information to be able
10 to corroborate and follow up and ask intelligent
11 questions?

12 A. It would -- I -- I'm going to say that it would
13 be helpful, yes.

14 Q. Yeah.

15 It -- it would have been your practice as a
16 detective to prepare for an interview like this by
17 getting the relevant information, right?

18 A. Yes. But, again, I'm just -- I don't know
19 exactly what circ- -- the circumstances were then. I
20 don't know. Maybe I did know what they had said and --
21 and -- and they were excluded. I just don't remember at
22 that point in time what the circumstances were.

23 Q. I understand.

24 Did you -- are you aware of any
25 investigation being done to discover why Mike Johnston

1 had threatened to kill Robert Hall if Robert Hall
2 snitched on him?

3 A. Why he would?

4 Q. Yes.

5 A. Well, because he snitched on him. He -- he
6 would turn it. I mean --

7 Q. But Mike Johnston -- well, right.

8 But my question is, are you aware of any
9 investigation being done as to why Mike Johnston, who
10 apparently was ruled out as a suspect, is still being --
11 is threatening to kill people who talk about his
12 involvement in this shooting he didn't commit?

13 A. I -- I don't remember being a part of that or
14 doing anything on that.

15 Q. And are you aware of anything like that
16 happening by anybody in this investigation?

17 A. No, I'm not.

18 Q. Okay. To your knowledge, did Mike Johnston
19 confess to the crime to any of the detectives?

20 A. No.

21 Q. And to your knowledge, did Jacob Jauregui
22 confess to the crime to any of the detectives?

23 A. No.

24 Q. And if they had given confessions that were
25 deemed unreliable, it would have been important to

1 document that, right?

2 A. Yes.

3 Q. So you're aware that Daniel eventually signed a
4 statement in this case, right?

5 A. Yes.

6 Q. And Daniel confessed to committing a drive-by
7 shooting in that statement, right?

8 A. Yes.

9 Q. And he said that Droopy and Popeye were both in
10 the car, right?

11 A. I -- I remember the names. I didn't read his
12 statement, but I was learning the facts from other guys
13 on the case --

14 Q. Right.

15 A. -- that he gave a statement.

16 Q. And is it consistent with your memory that
17 Varrio Northeast was connected to this shooting?

18 A. I -- I forget what gang affiliation some of the
19 people belonged to and which ones were involved. I -- I
20 don't remember. But I know there was.

21 Q. And -- and you were sitting with Link Brown
22 from the detect- -- from the gang task force after
23 Daniel Villegas had been picked up, right?

24 A. Yes.

25 Q. So you would have expected -- if Daniel had a

1 gang affiliation, you would have expected to know that
2 by that time, right?

3 A. Yes.

4 Q. And David -- do you recall David Rangel putting
5 in his statement that the murder victims had thrown gang
6 signs from the Eisenhower Crazy Hoods?

7 A. No, not that I remember.

8 Q. Okay. Okay. Were you aware that multiple
9 suspects had identified Droopy and Popeye as being in
10 the car?

11 A. I -- I remember the names, but I don't remember
12 exactly what it was.

13 Q. Sure.

14 Does -- were you aware of Droopy and Popeye
15 being implicated in any other drive-by shootings?

16 A. No, not that I remember.

17 Q. Does -- does the name "Prisciliano Villegas"
18 mean anything to you?

19 A. Can you repeat the name?

20 Q. Yeah. Prisciliano Villegas.

21 A. No.

22 Q. Did you take a statement from a Prisciliano
23 Villegas confessing to a drive-by shooting in 1992?

24 A. Not that I remember. I don't remember --

25 Q. Okay.

1 A. -- doing that.

2 Q. I'm going to pull up another exhibit. Okay.

3 I'm sorry. I forgot to stop sharing there for a minute.

4 Give me one second.

5 Okay. Let's mark this as Exhibit

6 Number 18, and this is at -- these -- this is at

7 Villegas J.S. 17107.

8 (Exhibit 18 marked.)

9 Q. Going to the top of this -- I'm sorry. I

10 should share this document with you before I ask you

11 questions about this.

12 Again, this is Exhibit Number 18. Sir, do

13 you recognize this document as a juvenile confession

14 warning?

15 A. Yes.

16 Q. And this is given by Prisciliano Villegas?

17 A. Yes.

18 Q. And it was on February 13, 1992?

19 A. Okay.

20 Q. Did you know that Prisciliano Villegas was

21 Daniel's little brother?

22 A. No.

23 Q. Okay. And I'm going to scroll down, actually,

24 to the bottom of this, of page 1. Do you see the first

25 two lines of the juvenile statement? "My name is

1 Prisciliano Villegas, and I am 13 years of age. I am at
2 the juvenile probation department with Officer J.
3 Arbogast, giving this statement of my own free will,
4 without any promises or threats being made to me."

5 A. Yes.

6 Q. Go ahead.

7 A. I have to say that's not me.

8 Q. Oh. Is that your brother?

9 A. Yes.

10 Q. I don't mean to laugh. It's just funny because
11 it's exactly what you said before.

12 A. Yeah.

13 Q. Okay now. Thank you. I'm going to stop
14 sharing this for a minute.

15 A. Okay.

16 Q. Okay. Did -- in -- in 1992, where in the
17 El Paso Poli- -- El Paso Police Department did your
18 brother work?

19 A. Gang task force.

20 Q. Gang task force.

21 And so he wasn't a juvenile officer at that
22 time, right?

23 A. No.

24 Q. Okay. So if I told you that Prisciliano
25 Villegas confessed to a drive-by shooting in 1992, would

1 you have any reason to disagree with that?

2 MR. JIM DARNELL: Object to speculation.

3 A. No.

4 Q. (BY MR. HILKE) And would you have any reason
5 to disagree that Prisciliano had named Droopy and Popeye
6 as being in the car?

7 A. I wouldn't have known that, no.

8 Q. But would you have any reason to disagree that
9 that -- that he had done so?

10 MR. JIM DARNELL: Object to speculation.

11 A. Okay. What was the question?

12 Q. (BY MR. HILKE) Yeah. No problem. Actually,
13 let me do this a different way.

14 A. Okay.

15 Q. I'm -- I'm going to give you a hypothetical and
16 ask some questions about it.

17 A. Okay.

18 Q. The hypothetical is this: Prisciliano Villegas
19 is Daniel's younger brother.

20 A. Okay.

21 Q. And in 1992, he confessed to your brother to
22 committing a drive-by shooting.

23 A. Okay.

24 Q. And he named Droopy and Popeye as being in the
25 car.

1 A. Okay.

2 Q. He also mentioned a Marcos who was in the car.

3 A. Okay.

4 Q. And he also mentioned that the people in the
5 car were affiliated with Varrio Northeast.

6 A. Okay.

7 Q. If all that were true --

8 A. Uh-huh.

9 Q. -- would that have been relevant to your
10 investigation?

11 MR. JIM DARNELL: But that's speculation.

12 A. I mean, it will only be relative that it was
13 gang affiliated.

14 Q. (BY MR. HILKE) If -- if -- if Droopy, Popeye,
15 and Marcos had all been linked to a drive-by shooting in
16 1992, and now in 1993 they're all being accused of that
17 again, is that something you would have wanted to know?

18 A. Yes. That would have been --

19 MR. ALMANZAN: Objection, calls for
20 speculation.

21 Q. (BY MR. HILKE) And that information could have
22 helped prove -- if it were true, could have helped prove
23 that Marcos, Droopy, or Popeye were involved in 1993,
24 right?

25 A. Well, they -- they -- they may have been

1 involved, yes. You would look at that.

2 Q. And that connection might have helped you find
3 evidence in this case if there are these gang members
4 with a pattern of drive-by shootings, right?

5 A. Yes.

6 Q. So -- and the gang task force was responsible
7 for making connections between gang-related crime,
8 right?

9 A. They had information on gang members, yes, and
10 they -- they -- they were with them all the time, and
11 that was their job.

12 Q. So if there were a Varrio Northeast-affiliated
13 drive-by shooting by Daniel Villegas's brother in 1992,
14 they would have connected that to a Varrio
15 Northeast-connected drive-by shooting involving Daniel
16 Villegas in 1993, right?

17 A. I'm not sure that I -- I can't answer that.
18 I -- I wasn't in the gang task force. You would like to
19 have that connection, yes.

20 Q. Sure. That would be the kind of connection
21 that the gang task force, in your experience, tried to
22 make; is that right?

23 A. Well, yeah. You would try to make that, if
24 that information was out there.

25 Q. Yeah.

1 And it's not -- the hypothetical we're
2 discussing, it's not the hardest connection in the world
3 to make, is it?

4 A. No.

5 MR. JIM DARNELL: Object to speculation.

6 Q. (BY MR. HILKE) And to your knowledge, was this
7 connection ever made during the investigation?

8 A. Not that I'm aware of.

9 Q. And to your knowledge, is the connection
10 reflected anywhere in the case file?

11 A. Not that I know of.

12 Q. In -- in your investigation, you did eventually
13 learn that Popeye and Droopy were both placed in the car
14 at the time of the shooting, right?

15 A. Yes. I remember the names.

16 Q. Yeah.

17 And you later learned that it was
18 impossible for Popeye and Droopy to have been in the
19 car, right?

20 A. I -- I think I found out through Marcus that he
21 couldn't make them in the case, that...

22 Q. Yeah.

23 And Popeye was actually incarcerated at the
24 time, right?

25 A. I'm not sure. I didn't have that information.

1 Q. And from your conversation with Fernando Lujan,
2 Droopy, you knew that he had checked in with his
3 probation officer before the shooting that night, right?

4 A. Yes.

5 Q. Okay. So did you ever find out why Daniel had
6 named these people as being in the car who could not
7 have been there?

8 A. No. I -- I have no idea.

9 Q. Did you ever find out why other suspects also
10 named Droopy and Popeye as present in the car?

11 A. No.

12 Q. To your knowledge, was any investigation done
13 to find out why?

14 A. Well, I'm not sure. I don't remember that.

15 Q. Okay.

16 A. I -- I know I -- if you're -- if there was any
17 follow-up, I -- I interviewed Fernando Lujan, who you
18 say was supposed to be Droopy. I mean, that would have
19 been a follow-up to see if he was involved, but --

20 Q. Right.

21 A. -- if there was any involvement on my part on
22 any part of that, I wouldn't know.

23 Q. Okay. Did you ever ask Fernando Lujan why all
24 these other people would have said he was in the car?

25 A. No.

1 Q. Would you agree that the confessions in this
2 case are less reliable because they all name two people
3 as being present who could not have been there?

4 MR. JIM DARNELL: Object to speculation.

5 A. Yeah, I'm not aware of that. I -- I don't
6 know.

7 Q. (BY MR. HILKE) Okay. Well, you're aware that
8 Daniel Villegas said that Droopy and Popeye were in the
9 car, right?

10 A. I -- I remember the names. I'm -- I'm trying
11 to place where that information came from.

12 Q. And so --

13 MR. HILKE: I'm sorry. Someone's audio is
14 on, and we've got a little background noise coming in.

15 MR. JEEP DARNELL: (Indiscernible.)

16 Q. (BY MR. HILKE) I guess my question is --

17 MR. JEEP DARNELL: (Indiscernible.)

18 Q. (BY MR. HILKE) -- you mentioned before that
19 you looked --

20 MR. HILKE: I'm sorry. Someone's got noise
21 coming in, and it looks like it turned off. No, it's
22 still coming in. Hey, who is that?

23 MR. JEEP DARNELL: Yes. It's my apologies
24 for bringing --

25 UNIDENTIFIED SPEAKER: Oh, no.

MR. HILKE: Who's -- Jeep, is that you?

(Indiscernible.)

MR. HILKE: Let -- let's go off the record
a second.

THE VIDEO TECHNICIAN: Okay. We're off the
record. The time is 5:03.

(Break taken.)

THE VIDEO TECHNICIAN: We're back on the
record for the deposition of Earl Arbogast being
conducted by videoconference. My name is Sydney Little.
Today is June 30th, 2022, and the time is 5:05.

**Q. (BY MR. HILKE) You mentioned -- is it correct
that in taking a confession, you look for corroborating
information?**

A. Yes.

**Q. And what Daniel said, that Droopy and Popeye
were in the car, that was found to be false, right?**

A. And I -- I don't think a Droopy or Popeye were
ever, you know, arrested to corroborate that, so, yeah,
there was no corroboration as far as to that fact.

**Q. Yeah. And so that's almost the opposite of
corroboration, right? That's an inconsistency in a
confession, right?**

A. Well, that would be, yes.

Q. Okay. And inconsistencies like that, that's

1 why you look for corroboration, right? Because the more
2 inconsistencies, the less reliable the confession is,
3 right?

4 A. You -- I agree that you try to get as much
5 corroboration you can in a confession.

6 Q. And if a confession has -- as -- the more
7 details a confession has that you find to be untrue,
8 that casts increasing doubt on the confession, right?

9 A. Well, that's assuming that -- you know,
10 sometimes suspects don't tell you the truth all the
11 time. If he had -- if he had other people that were
12 with him and he didn't want to name them and he named
13 somebody else, I mean, that could be an explanation.
14 But I'm just saying, as a rule, corroboration is
15 something that you try for.

16 Q. Yeah. Because the more corroboration you get,
17 the more reliable a confession generally is, right?

18 A. Yes.

19 Q. And are you aware of any physical evidence that
20 corroborated Daniel Villegas's confession?

21 A. No.

22 Q. And did you investigate whether Daniel's
23 description of the car matched the survivors'
24 description of the car?

25 A. I -- I don't know what his description was.

1 Q. Right, but did -- did you investigate whether
2 the descriptions of the car matched?

3 A. Well, from Daniel, you mean?

4 Q. Yes, sir.

5 A. I -- I didn't investigate that, no, that part
6 of it.

7 Q. And so sitting here today, can you state
8 whether you learned during the investigation that Popeye
9 was incarcerated?

10 A. Yeah, I don't know if he was.

11 Q. Okay. If during the investigation detectives
12 learned that Popeye was incarcerated, that should have
13 been documented, right?

14 A. If that's the same Popeye, yeah, it should have
15 been.

16 Q. Okay. And the investigation should have
17 included finding out whether -- where Popeye was on the
18 night of the murder, right?

19 A. Well, if he was in jail, I don't know if that
20 was necessary.

21 Q. Right. If -- if you knew he was in jail, then
22 your investigation is done, right?

23 A. Yes.

24 Q. But as the -- as someone in the car during a
25 drive-by shooting, a thorough investigation has to

1 include investigating whether Popeye was there,
2 incarcerated, or something else, right?

3 A. Yes, you would think so.

4 Q. Eventually, Daniel was charged in this case,
5 right?

6 A. Yes.

7 Q. And the police department was responsible for
8 presenting the case to be charged, right?

9 A. Yes, to the -- yes.

10 Q. Did you ever tell the prosecutor's office that
11 Droopy or Popeye could not have been in the car at the
12 time of the murder?

13 A. I -- I didn't. I wasn't -- I was never a part
14 of the case until -- I never went to either trial. I
15 never had a conference with the prosecutors when the
16 case was being prosecuted.

17 Q. To your knowledge, did anyone tell the
18 prosecutor's office that Droopy or Popeye could not have
19 been in the car at the time of the murder?

20 A. Not that I know.

21 MR. JIM DARNELL: Object, speculation.

22 Q. (BY MR. HILKE) Okay. So I'm -- I'm going to
23 change topics for a minute. I'm going to ask you a few
24 financial questions, and the reason I'm asking you these
25 is if we decide to seek -- I don't -- I won't go into it

1 too much, but is -- if we decide to seek punitive
2 damages at trial. That's the relevance.

3 A. Okay.

4 Q. Do you currently own any property?

5 A. Yes.

6 Q. You have a house?

7 A. Yes.

8 Q. What's the approximate worth of the house?

9 A. About 280,000, I would guess.

10 Q. And do you have any debt on that house?

11 A. No.

12 Q. And do you own any other property?

13 A. No.

14 Q. Do you own any vehicles?

15 A. Yes.

16 Q. How many?

17 A. I have four right now.

18 Q. What's the first one?

19 A. I have a 1998 Jeep.

20 Q. And what's the second one?

21 A. I have a 2020 Toyota CHR.

22 Q. Okay. Is there any debt on the CHR?

23 A. No.

24 Q. Okay. And what's the third one?

25 A. It's a 2016 Ram truck.

1 Q. Okay. Any -- any debt on that one?

2 A. No.

3 Q. And what's the fourth one?

4 A. A 20-, I guess, -18 Subaru.

5 Q. Okay. Any debt on that one?

6 A. Yes.

7 Q. How much?

8 A. I -- it's small. I don't know exactly what it
9 is.

10 Q. Okay. Do you own any stocks?

11 A. Savings and mutuals, savings.

12 Q. Savings and mutuals? About how much is in your
13 savings and mutuals?

14 A. I don't know exactly. I would guess maybe
15 around 150-, but I could be off.

16 Q. Okay. And -- and do you have money in a
17 checking account?

18 A. Yes.

19 Q. About how much?

20 A. Today, before all my bills, it's about 15,000.

21 Q. Okay. And do you currently draw a pension from
22 El Paso?

23 A. Yes, I do.

24 Q. And about how much is that?

25 A. It's about \$61,000 a year.

1 Q. Okay. And you also worked at the University of
2 Texas; is that right?

3 A. Yes.

4 Q. Did you draw a pension from that?

5 A. Yes.

6 Q. About how much?

7 A. It's about 24,000.

8 Q. Okay. And do you own any valuables worth more
9 than \$5,000, like collectibles, guns, anything like
10 that?

11 A. No.

12 Q. Okay. And do you currently support any
13 dependents?

14 A. No.

15 Q. You don't have any kids under 18 who you
16 support?

17 A. Under 18, no. I mean, no.

18 Q. Yeah. And you don't have any like older
19 relatives who you're financially responsible for?

20 A. No.

21 Q. Okay. And do you currently have any -- any
22 credit card debt?

23 A. My credit card debt is zero.

24 Q. Okay.

25 A. I -- I have a credit card. I just pay it off

1 at the end of every month.

2 Q. Yeah.

3 Do you have any debts of any other kind?

4 A. No.

5 Q. Okay. Sitting here today, do you believe that
6 Daniel Villegas was guilty of murdering Lazo and
7 England?

8 A. I don't know.

9 Q. If it were up to you, would Daniel Villegas
10 still be in prison?

11 MR. JIM DARNELL: Object to speculation.

12 A. It's hard to say. I -- I really don't know.

13 Q. (BY MR. HILKE) So sitting here today, you
14 think it's possible that Daniel Villegas was wrongly
15 convicted?

16 A. I mean, it happens, so it's always possible,
17 yes.

18 Q. And would you have the same hesitation about
19 everyone who's been convicted of homicide through an
20 investigation you were involved in?

21 A. No.

22 Q. If you did this investigation again, would you
23 do anything differently?

24 MR. JIM DARNELL: Object, speculation. He
25 wasn't the case agent.

1 Q. (BY MR. HILKE) Okay. You can answer.

2 A. If I was to do anything differently? I -- I
3 don't know.

4 Q. Are there any interviews you conducted where
5 you would have asked more questions given a second
6 chance?

7 MR. JIM DARNELL: Object --

8 A. At that --

9 MR. JIM DARNELL: -- speculation.

10 A. Yeah. It's -- I -- I don't really know. I
11 mean, I may have looked at -- harder at some suspects or
12 something, but I -- I wasn't in Detective Marquez's
13 shoes, so I can't say I wouldn't have done the same
14 thing he did or not.

15 Q. (BY MR. HILKE) Yeah.

16 MR. HILKE: Those -- those are all the
17 questions I have, sir. Thank you for your time today.

18 THE WITNESS: Thank you.

19 MR. JIM DARNELL: Wait. He has -- at least
20 one other person.

21 MR. ALMANZAN: This is Andy Almanzan.
22 We'll reserve our questions for this witness until the
23 time of trial.

24 MR. TSCHIRHART: Jim, I think I'd like to
25 ask just one little follow-up issue.

1 MR. HILKE: Okay.

2 EXAMINATION

3 BY MR. TSCHIRHART:

4 Q. Mr. Arbogast, back early in your deposition,
5 you talked about the case agent binder. Do you recall
6 that?

7 A. Yes. Yes.

8 Q. All right. And I think you said something
9 about -- later in your testimony, and I may have
10 misheard it, but at the time of Daniel Villegas's
11 arrest, was -- was that case agent binder where all the
12 information was kept, or was that a process that came
13 into effect later?

14 A. No, it's -- it's something that the -- the case
15 agent always keeps.

16 Q. Okay. That -- that was the only question I
17 had. Because it appeared that there were
18 contemporaneous reports that were written throughout
19 the -- the investigation.

20 A. There are. They're -- they're given to the
21 case agent, and he puts them in the binder.

22 MR. TSCHIRHART: Okay. That was the only
23 question that I had. Thank you for your time.

24 THE WITNESS: Okay.

25 MR. JIM DARNELL: Can we be free?

1 MR. MARTINEZ: Yeah. Nothing from me.

2 THE REPORTER: Before we go off the record,
3 I need to get orders on the record. Mr. --

4 MR. ALMANZAN: This is Andy. Ginger, this
5 is Andy.

6 THE REPORTER: Yes.

7 MR. ALMANZAN: I -- I do not need a copy.
8 I'm not ordering one.

9 THE REPORTER: Thank you.

10 MR. ALMANZAN: Thank you.

11 THE REPORTER: Mr. --

12 MR. MARTINEZ: Same thing, Ginger. I'm not
13 ordering.

14 THE REPORTER: Okay. That's Mr. Martinez?

15 MR. MARTINEZ: Yes, ma'am.

16 THE REPORTER: And then, Mr. Tschirhart?

17 MR. TSCHIRHART: I believe I won't be
18 ordering, either.

19 THE REPORTER: Okay. Mr. Brittain?

20 MR. BRITTAIN: No, ma'am.

21 THE REPORTER: And, Mr. Darnell?

22 MR. JIM DARNELL: Yes. We will take a copy
23 of the deposition and the video.

24 THE REPORTER: And do you want them -- what
25 format?

1 MR. JIM DARNELL: Shoot, I don't know.

2 THE REPORTER: I think you usually do
3 E-Tran.

4 MR. JIM DARNELL: Probably. And a
5 full-size copy.

6 THE REPORTER: Okay. And then, Mr. Hilke,
7 what format do you want your depo in?

8 MR. HILKE: Yes. So we'll do just the
9 transcript, not a video. What's the cheaper of the
10 transcript options? Because I think that's what we will
11 want.

12 THE REPORTER: It's all the same as far
13 as -- I mean, don't know billing, honestly.

14 MR. HILKE: Okay.

15 THE REPORTER: I think it's all the same no
16 matter what format you get.

17 MR. HILKE: I think -- I think we'll --
18 we'll be happy with like a PDF version. I -- I guess
19 I trust you on it. I -- I'm not sure what the
20 difference is.

21 THE REPORTER: Okay. And then,
22 Mr. Darnell, do you want read and sign?

23 MR. JIM DARNELL: Yes, please.

24 THE REPORTER: Okay. That's all my
25 information. Thank you.

1 THE VIDEO TECHNICIAN: All right. Did
2 anybody else want a copy of the video? No. Okay.

3 We're going off the record.

4 (Deposition concluded at 5:19 p.m.)
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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF EL PASO)

I, Ginger G. Zachary, Registered Professional
Reporter, Certified Realtime Reporter, and Certified
Shorthand Reporter in and for the State of Texas, hereby
Certify that this transcript is a true record of the
said proceedings, and that said transcription is done to
the best of my ability.

Given under my hand and seal of office on
July 13, 2022.

Ginger G. Zachary, CSR, RPR, CRR
Texas Certification Number 5710
Date of Expiration: 1/31/2024
KENTUCKIANA COURT REPORTERS
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Louisville, Kentucky 40202
Ph.: 502.589.2273

CORRECTIONS AND SIGNATURE

WITNESS: EARL ARBOGAST

DATE: JUNE 30, 2022

PAGE LINE CORRECTION

REASON

1 I, EARL ARBOGAST, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

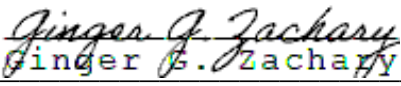
4
5 _____
6 EARL ARBOGAST

7 THE STATE OF TEXAS)

8 COUNTY OF EL PASO)
9

10 Before me, _____, on this
11 day personally appeared EARL ARBOGAST known to me (or
12 proved to me under oath or through _____)
13 (description of identity card or other document) to be
14 the person whose name is subscribed to the foregoing
15 instrument and acknowledged to me that they executed the
16 same for the purposes and consideration therein
17 expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, _____.

20
21 
22 NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

23 My commission expires: _____
24
25

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ATTACHMENT 2-C



KENTUCKIANA
— COURT REPORTERS —

NO. 3:15-CV-386

DANIEL VILLEGAS

V.

CITY OF EL PASO, ET AL.

DEPONENT:

SCOTT GRAVES

DATE:

July 28, 2022



✉ schedule@kentuckianareporters.com

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

DANIEL VILLEGAS,)
)
Plaintiff,)
v) No. 3:15-CV-386
)
CITY OF EL PASO, et al.,)
)
Defendants.)

ZOOM VIDEO DEPOSITION OF
SCOTT GRAVES
JULY 28, 2022

ZOOM VIDEO DEPOSITION of SCOTT GRAVES,
produced as a witness at the instance of the Plaintiff,
and duly sworn, was taken in the above-styled and
numbered cause on JULY 28, 2022, from 9:05 a.m. to 3:59
p.m., via Zoom, pursuant to the Federal Rules of Civil
Procedure.

Reported by:

Ginger G. Zachary, CSR, RPR, CRR

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4	LOEVY & LOEVY	4	Exhibit 02 Confessions, Admissions, and 68
5	311 North Aberdeen Street		Statements
6	Chicago, Illinois 60607	5	Exhibit 03 Performance Evaluation Report, 93
7	(312) 243-5900	6	Supplement, 7-1-1992 - 12-31-1992
8	hilke@loevy.com	7	Exhibit 04 Performance Evaluation Report, 94
9	FOR THE DEFENDANT CITY OF EL PASO:		Supplement, 7-1-1993 - 12-31-1993
10	Mr. Scott M. Tschirhart	8	Exhibit 05 El Paso Police Department Supplement 115
11	DENTON NAVARRO ROCHA BERNAL & ZECH, PC	9	Report, Statement of Rodney Williams, 4-21-1993
12	2517 North Main Avenue	10	Exhibit 06 El Paso Police Department Supplement 119
13	San Antonio, Texas 78212	11	Report, Statement of Terri Vinson, 4-12-1993
14	(210) 227-3243	12	Exhibit 07 El Paso Police Department Supplement 122
15	smtschirhart@rampagelaw.com	13	Report, Statement of Terrance Strong 124
16	FOR THE DEFENDANTS EARL ARBOGAST, SCOTT GRAVES,	14	Exhibit 08 El Paso Police Department Supplement 126
17	HECTOR LOYA, AND RAY SANCHEZ:	15	Report, Statement of Cynthia 128
18	Mr. James O. "Jim" Darnell	16	Exhibit 09 El Paso Police Department Supplement 131
19	Mr. James O. "Jeep" Darnell	17	Report, Statement of Eduardo Valles, 4-14-1993
20	Mr. Cris Estrada	18	Exhibit 10 El Paso Police Department Supplement 135
21	JIM DARNELL, PC	19	Report, Statement of Gilbert Garcia, 4-14-1993
22	310 North Mesa Street, Suite 212	20	Exhibit 11 El Paso Police Department Crimes 180
23	El Paso, Texas 79901	21	Against Persons Division 186
24	(915) 532-2442	22	Supplementary Report, 5-6-1993
25	jdarnell@jdarnell.com	23	Exhibit 12 El Paso Police Department Supplement 201
	jedarnell@jdarnell.com	24	Report, 5-5-1993
	cestrada@jdarnell.com	25	Voluntary Statement of Accused, Marcos Gonzalez, 4-22-1993
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1	A P P E A R A N C E S (continued)	1	EXHIBITS (continued)
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3	Mr. James A. Martinez	3	Exhibit 14 Voluntary Statement of Accused, 182
4	JAMES A. MARTINEZ, PLLC		Marcos Gonzalez, 4-22-1993
5	7170 Westwind Drive, Suite 201	4	Exhibit 15 El Paso Police Department Internal 186
6	El Paso, Texas 79912	5	Affairs Division Disciplinary 193
7	(915) 543-9712	6	History Card
8	martinezja@jmeplaw.com	7	Exhibit 16 Court Testimony of Scott Graves, 199
9	FOR THE DEFENDANT CARLOS ORTEGA:	8	Exhibit 17 El Paso Police Department, El Paso, 201
10	Mr. Andres E. Almanzan	9	Texas, Inter-Office Memorandum, 8-26-1986
11	MOUNCE, GREEN, MYERS, SAFI,	10	Exhibit 18 El Paso Police Department 201
12	PAXSON & GALATZAN, PC	11	Multi-Purpose Sworn Supplement,
13	100 North Stanton Street, Suite 1000	12	
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21	Mr. Michael Garcia	20	
22		21	
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<p style="text-align: right;">Page 6</p> <p>1 THE VIDEO TECHNICIAN: Okay. My name is</p> <p>2 Jessica Chase. I'm the online video technician, and</p> <p>3 Ginger Zachary is the court reporter. We both represent</p> <p>4 Kentuckiana Reporters, located at 730 West Main Street,</p> <p>5 Suite 101, Louisville, Kentucky 40202.</p> <p>6 Today is the 28th day of July 2022, and the</p> <p>7 time is 10:05 [sic] a.m. We are convened by</p> <p>8 videoconference to take the deposition of Scott Graves</p> <p>9 in the matter of Daniel Villegas versus City of El Paso,</p> <p>10 et al., pending in the United States District Court for</p> <p>11 the Western District of Texas, El Paso Division, Cause</p> <p>12 Number 3:15-CV-386.</p> <p>13 Will everyone but the witness please state</p> <p>14 your appearance, how you are attending, and the location</p> <p>15 you are attending from, starting with Plaintiff's</p> <p>16 counsel?</p> <p>17 MR. HILKE: Good morning. Wally Hilke for</p> <p>18 Plaintiff Daniel Villegas, attending from the Loevy &</p> <p>19 Loevy offices in Chicago, Illinois.</p> <p>20 MR. ALMANZAN: And this -- this is Andy</p> <p>21 Almanzan appearing for Defendant Carlos Ortega. I'm</p> <p>22 here in my office in El Paso, Texas, and along with my</p> <p>23 client -- excuse me. Part of my client representation</p> <p>24 is a law clerk, Michael Garcia, who's also attending</p> <p>25 from El Paso, Texas. Thank you.</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. TSCHIRHART: Agreed.</p> <p>2 THE VIDEO TECHNICIAN: All right. Perfect.</p> <p>3 And then, Mr. Graves, will you please raise</p> <p>4 your right hand? And Ms. Chew will swear you in.</p> <p>5 THE REPORTER: My name is Ginger Zachary,</p> <p>6 Texas CSR 5710. I am reporting the deposition remotely</p> <p>7 by stenographic means from Chaparral, New Mexico. The</p> <p>8 witness is located in El Paso, Texas. The Texas Online</p> <p>9 Notary Public is Elissa E. Chew, Commission number</p> <p>10 126254355, located in El Paso, Texas, who will now</p> <p>11 administer the oath.</p> <p>12 (Witness duly sworn.)</p> <p>13 MS. CHEW: You may proceed, Counsel.</p> <p>14 SCOTT GRAVES,</p> <p>15 having been first duly sworn, testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. HILKE:</p> <p>18 Q. Good morning, sir. My name's Wally Hilke, and</p> <p>19 I'm one of the lawyers for Plaintiff Daniel Villegas in</p> <p>20 this case, and I'll be -- I'll be asking you some</p> <p>21 questions today, but could we just start with you please</p> <p>22 stating and spelling your name for the record?</p> <p>23 A. Yes. It's Scott, S-C-O-T-T. My last name is</p> <p>24 Graves, G-R-A-V-E-S.</p> <p>25 Q. Great.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. TSCHIRHART: This is Scott Tschirhart</p> <p>2 representing the City of El Paso, attending from</p> <p>3 San Antonio, Texas.</p> <p>4 MR. JIM DARNELL: This is Jim Darnell. I'm</p> <p>5 representing Scott Graves from the beautiful downtown</p> <p>6 offices of me.</p> <p>7 MR. MARTINEZ: This is Jim Martin --</p> <p>8 MR. BRITTAIN: Eric Brittain --</p> <p>9 MR. MARTINEZ: This is Jim Martinez. I am</p> <p>10 at my home office at Rancho Martinez in El Paso, Texas.</p> <p>11 I represent Alfonso Marquez.</p> <p>12 MR. BRITTAIN: Eric Brittain on behalf of</p> <p>13 Defendant Kimmett Bellows, in my office in downtown</p> <p>14 El Paso, Texas.</p> <p>15 THE VIDEO TECHNICIAN: Okay. Is that</p> <p>16 everybody?</p> <p>17 If that's everybody, Mr. Graves, will you</p> <p>18 please state your name and hold your driver's license up</p> <p>19 to the camera?</p> <p>20 THE WITNESS: Yes. My name is Scott</p> <p>21 Graves.</p> <p>22 THE VIDEO TECHNICIAN: Okay. Thank you.</p> <p>23 And do all parties agree the witness is, in</p> <p>24 fact, Scott Graves?</p> <p>25 MR. HILKE: Yes.</p>	<p style="text-align: right;">Page 9</p> <p>1 And can you hear me okay on your end?</p> <p>2 A. Yes.</p> <p>3 Q. Great.</p> <p>4 Have you ever had your deposition taken</p> <p>5 before?</p> <p>6 A. No.</p> <p>7 Q. Okay. I'm going to go over sort of a few</p> <p>8 ground rules that'll make this go a little smoother</p> <p>9 today. Just like when you're in court, there is a court</p> <p>10 reporter taking down everything we say, and so if you'll</p> <p>11 keep your voice loud and answer verbally instead of with</p> <p>12 like "uh-huh" or nodding your head, that'll make it</p> <p>13 easier for her. Does that make sense?</p> <p>14 A. Yes.</p> <p>15 Q. And, likewise, it's going to be important for</p> <p>16 us to speak one at a time so she doesn't get furious</p> <p>17 with both of us. Does that make sense?</p> <p>18 A. Yes.</p> <p>19 Q. And I'm going to try to only ask you questions</p> <p>20 today that make sense, but if anything I ask you doesn't</p> <p>21 make sense, will you stop me and ask me to clarify?</p> <p>22 A. Yes.</p> <p>23 Q. And, likewise, if you answer, I -- I will</p> <p>24 assume that you understood my question. Is that fair?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. And we can take breaks whenever you need to</p> <p>2 today, but if I'm -- if I have a question I've just</p> <p>3 asked you, I will ask you to answer it before we break.</p> <p>4 Is that fair?</p> <p>5 A. Yes.</p> <p>6 Q. And do you have any health conditions that</p> <p>7 affect your memory in any way?</p> <p>8 A. Yes, I do.</p> <p>9 Q. Okay. What -- what health conditions do you</p> <p>10 have?</p> <p>11 A. I have some stress disorders.</p> <p>12 Q. What stress disorders do you have?</p> <p>13 A. Post-traumatic stress.</p> <p>14 Q. And how does your post-traumatic stress affect</p> <p>15 your memory?</p> <p>16 A. It -- it affects a lot of my ability to</p> <p>17 remember. I mean, it does affect that.</p> <p>18 Q. I understand.</p> <p>19 And when were you first diagnosed with</p> <p>20 post-traumatic stress?</p> <p>21 A. 10 to 15 years ago.</p> <p>22 Q. And is there -- is there a particular time</p> <p>23 period in your life that -- where you had the stresses</p> <p>24 that you associate with your post-traumatic stress?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Oh, to prevent dreams. Okay.</p> <p>2 And what impacts do you notice from that</p> <p>3 drug on your memory?</p> <p>4 A. I don't dream, and so, I mean, a lot of the</p> <p>5 things that would bother me don't.</p> <p>6 Q. I see.</p> <p>7 And does that affect your ability to say --</p> <p>8 okay. And which -- I'm sorry. Which -- which drug in</p> <p>9 particular is it that you take for dreams?</p> <p>10 A. I'd have to look at it. It's a -- it's a blood</p> <p>11 pressure medicine, and it's -- it's off -- it's an</p> <p>12 off-label thing.</p> <p>13 Q. Okay. Any -- any other prescriptions that you</p> <p>14 take -- prescription drugs that you take that affect</p> <p>15 your memory that you've noticed?</p> <p>16 A. I -- I don't think so.</p> <p>17 Q. Okay. And then are you -- is there -- do you</p> <p>18 have any -- any health conditions that would prevent you</p> <p>19 from testifying honestly and truthfully today?</p> <p>20 A. No.</p> <p>21 Q. Are you taking any prescription drugs that</p> <p>22 would make it more difficult to testify honestly and</p> <p>23 truthfully today?</p> <p>24 A. No.</p> <p>25 Q. And are you currently under the influence of</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. What time period is that?</p> <p>2 A. I think from some things that happened in</p> <p>3 the -- the Army and then also some things that happened</p> <p>4 when I was a police officer.</p> <p>5 Q. Any particular period from when you were a</p> <p>6 police officer?</p> <p>7 A. Yes.</p> <p>8 Q. What period is that?</p> <p>9 A. When I was in crimes against persons,</p> <p>10 primarily.</p> <p>11 Q. And other than post-traumatic stress, do you</p> <p>12 have other health conditions that impact your memory?</p> <p>13 A. I don't think so, no.</p> <p>14 Q. Okay. And do you take any -- any prescription</p> <p>15 drugs that impact your memory in any way?</p> <p>16 A. I don't know if they impact my memory or not.</p> <p>17 Q. Have you -- have you noticed any impact on your</p> <p>18 ability to remember from any prescription drugs that you</p> <p>19 take?</p> <p>20 A. Yes, on -- on one that I take for dreams.</p> <p>21 Q. I'm sorry. I couldn't quite hear that answer.</p> <p>22 A. On one of the medicines that I take for dreams.</p> <p>23 Q. And did you say it's a medicine you take for</p> <p>24 dreams?</p> <p>25 A. To prevent dreams.</p>	<p style="text-align: right;">Page 13</p> <p>1 any drugs or alcohol?</p> <p>2 A. No.</p> <p>3 Q. Okay. Without telling me anything you said to</p> <p>4 your lawyer or anything your lawyer said to you, can you</p> <p>5 tell me how you prepared for today's deposition?</p> <p>6 A. I looked at transcripts and statements.</p> <p>7 Q. Okay. How many statements did you look at?</p> <p>8 A. I think three or four, probably.</p> <p>9 Q. Okay. And whose statements were they?</p> <p>10 A. I think one of them was Rodney Williams, two</p> <p>11 with Marco Gonzalez, and then Terrance Farrar.</p> <p>12 Q. Okay. Did you review any other statements in</p> <p>13 preparation for today?</p> <p>14 A. I don't believe so, no, sir. Transcripts.</p> <p>15 Q. Sure. And whose -- and the transcripts, who</p> <p>16 was -- whose testimony did you review?</p> <p>17 A. Mine.</p> <p>18 Q. And how many transcripts did you review?</p> <p>19 A. I think it was three of them.</p> <p>20 Q. And were two of those transcripts from Daniel</p> <p>21 Villegas's first and second criminal trials?</p> <p>22 A. Yes.</p> <p>23 Q. And was one of them from a suppression hearing</p> <p>24 regarding Daniel Villegas?</p> <p>25 A. I think so, yeah.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. And did you look at any other transcripts?</p> <p>2 A. No, sir.</p> <p>3 Q. Did you look at any other documents?</p> <p>4 A. No, sir.</p> <p>5 Q. And did you -- again, without telling me what</p> <p>6 you said, did you speak with your attorney to prepare</p> <p>7 for the deposition?</p> <p>8 A. Yes.</p> <p>9 Q. And how many times did you speak with your</p> <p>10 attorney?</p> <p>11 A. Twice.</p> <p>12 Q. Okay. And for how long, approximately?</p> <p>13 A. Oh, spent a couple hours.</p> <p>14 Q. And was anyone present for those conversations</p> <p>15 other than you and your attorneys?</p> <p>16 A. No.</p> <p>17 Q. So did you review any -- any videos in</p> <p>18 preparation for this deposition?</p> <p>19 A. No.</p> <p>20 Q. Or any personal notes about the Daniel -- about</p> <p>21 the Electric Street murders?</p> <p>22 A. No.</p> <p>23 Q. Or anything else that you haven't mentioned?</p> <p>24 A. No.</p> <p>25 Q. Okay. And have you -- say, in the last four</p>	<p style="text-align: right;">Page 16</p> <p>1 A. No.</p> <p>2 Q. Is there anything you wanted to look at, but</p> <p>3 didn't get a chance to to prepare for the deposition</p> <p>4 today?</p> <p>5 A. Not that I'm aware of, no.</p> <p>6 Q. And did you have adequate time to prepare?</p> <p>7 A. I think so.</p> <p>8 Q. Okay. Do you feel prepared to testify today?</p> <p>9 A. Honestly, no.</p> <p>10 Q. Is there anything that you want to make sure</p> <p>11 you look at today so you can feel prepared, feel that</p> <p>12 you had a chance to prepare?</p> <p>13 A. Not -- not that I can think off -- off the top</p> <p>14 of my head, no.</p> <p>15 Q. Okay. Sir, how old are you today?</p> <p>16 A. 58.</p> <p>17 Q. Okay. And where did you go to high school?</p> <p>18 A. In Martinsburg, New York.</p> <p>19 Q. Okay. And you then joined the military; is</p> <p>20 that right?</p> <p>21 A. Yes.</p> <p>22 Q. And what branch did you serve in?</p> <p>23 A. In the Army.</p> <p>24 Q. Okay. How long did you serve?</p> <p>25 A. How long? For three years active duty and then</p>
<p style="text-align: right;">Page 15</p> <p>1 years, have you spoken to Al Marquez at any time?</p> <p>2 A. No.</p> <p>3 Q. Have you talked to --</p> <p>4 A. Maybe at a hearing. I might have said "hi" to</p> <p>5 him at a hearing.</p> <p>6 Q. Did you --</p> <p>7 A. But I'm not sure if that was in the last four</p> <p>8 years or not.</p> <p>9 Q. Did you say anything more substantive than "hi"</p> <p>10 the last time you saw him?</p> <p>11 A. No.</p> <p>12 Q. What about Earl Arbogast? Have you spoken with</p> <p>13 him in the last four years?</p> <p>14 A. No. It -- it would be the same. I said "hi"</p> <p>15 to him when I saw him at a hearing for this very case.</p> <p>16 Q. Okay. And what about Carlos Ortega? Have you</p> <p>17 spoken to him in the last four years?</p> <p>18 A. No.</p> <p>19 Q. Kimmett Bellows?</p> <p>20 A. No.</p> <p>21 Q. Or Hector Loya?</p> <p>22 A. Who?</p> <p>23 Q. Hector Loya.</p> <p>24 A. No, sir.</p> <p>25 Q. Or Ray Sanchez.</p>	<p style="text-align: right;">Page 17</p> <p>1 for a couple in the National Guard.</p> <p>2 Q. What kind of discharge did you receive?</p> <p>3 A. An honorable.</p> <p>4 Q. Okay. Did you say "an honorable" discharge?</p> <p>5 A. An honorable discharge.</p> <p>6 Q. Okay. Thank you, sir.</p> <p>7 And where did you go after you left to the</p> <p>8 Army?</p> <p>9 A. I stayed in El Paso.</p> <p>10 Q. Okay. And that's where you were stationed for</p> <p>11 a couple of years in the -- in the Army?</p> <p>12 A. Yes. Well, I don't think it was a couple of</p> <p>13 years. I think it was a year and maybe a half.</p> <p>14 Q. While you were in the military, did you ever</p> <p>15 serve as military police?</p> <p>16 A. No.</p> <p>17 Q. And then after you left the Army, was your next</p> <p>18 employment with the El Paso Police Department?</p> <p>19 A. No. It was with a construction company.</p> <p>20 Q. How long -- and how long, approximately, did</p> <p>21 you work for that construction company?</p> <p>22 A. It -- it wasn't for long. It was until I got</p> <p>23 into the police department.</p> <p>24 Q. Okay. So when you -- and so you applied to</p> <p>25 become an -- you then applied to become a police officer</p>

<p style="text-align: right;">Page 18</p> <p>1 with the El Paso Police Department; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And you did, in fact, become a police officer</p> <p>4 there.</p> <p>5 A. I didn't what?</p> <p>6 Q. You -- you did become a police officer there;</p> <p>7 is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And when -- when you became a police officer,</p> <p>10 was there an academy program that they sent you through?</p> <p>11 A. Yes, there was.</p> <p>12 Q. Okay. And, in fact, do you remember about how</p> <p>13 long that academy was?</p> <p>14 A. It was four and a half months.</p> <p>15 Q. And so did you receive, say, classroom-style</p> <p>16 instruction in the academy?</p> <p>17 A. Yes.</p> <p>18 Q. Do you -- do you learn about how to conduct</p> <p>19 investigations?</p> <p>20 A. To a limited degree, yes.</p> <p>21 Q. And did you learn about how to collect</p> <p>22 evidence?</p> <p>23 A. Yes.</p> <p>24 Q. How to interview witnesses?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes.</p> <p>2 Q. About how many partners did you have?</p> <p>3 A. I -- I'm not really sure, but I would say half</p> <p>4 a dozen, at least. And by "partners," you mean people I</p> <p>5 just worked with, yes?</p> <p>6 Q. I think so.</p> <p>7 Was it typical to send two people out</p> <p>8 together in a car?</p> <p>9 A. Yes.</p> <p>10 Q. And would you be assigned the same person to go</p> <p>11 out in a car with at various stretches of time?</p> <p>12 A. Sometimes, yes.</p> <p>13 Q. Okay. Do you recall working with anyone during</p> <p>14 that time who would later participate in the Electric</p> <p>15 Street murders investigation?</p> <p>16 A. Well, Earl Arbogast was on the same shift that</p> <p>17 I was on for a while.</p> <p>18 Q. So you had the opportunity to work on cases</p> <p>19 with Earl when you were on patrol?</p> <p>20 A. I'm not sure if we ever actually worked in the</p> <p>21 same car, but I'm pretty certain that we probably showed</p> <p>22 up to calls that each other was at.</p> <p>23 Q. Sure.</p> <p>24 What was your next assignment after patrol</p> <p>25 in the northeast?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. And you learned about people's constitutional</p> <p>2 rights; is that fair?</p> <p>3 A. Yes.</p> <p>4 Q. And you have also conducted some hands-on</p> <p>5 exercises there; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. After you left the academy, what was your first</p> <p>8 assignment?</p> <p>9 A. It was on patrol in the northeast.</p> <p>10 Q. And were you in a marked car?</p> <p>11 A. Yes.</p> <p>12 Q. And so you were a uniformed as a -- you wore a</p> <p>13 uniform as a patrol officer; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And the northeast -- roughly, what are the</p> <p>16 boundaries of the northeast?</p> <p>17 A. Back then, it was probably Monroe Street on the</p> <p>18 south side, and then it was the mountain on the west</p> <p>19 side, up to the -- basically, the city limits in the</p> <p>20 north, and to the east to the desert.</p> <p>21 Q. And how long did you remain on patrol in the</p> <p>22 northeast?</p> <p>23 A. For about four years.</p> <p>24 Q. And did you have -- did you have various</p> <p>25 partners during your time in the northeast?</p>	<p style="text-align: right;">Page 21</p> <p>1 A. It was crimes against persons.</p> <p>2 Q. Okay. And so the -- going to crimes against</p> <p>3 persons, did you have to test to become a detective to</p> <p>4 take that position?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And am I correct that it was about 1988</p> <p>7 that you became a detective in crimes against persons?</p> <p>8 A. Yes.</p> <p>9 Q. And when you came on as a detective, did you</p> <p>10 receive any specific training at that time?</p> <p>11 A. I did over the course while I was a detective,</p> <p>12 but I don't think that I went through like a detective</p> <p>13 training program and then -- before I became a</p> <p>14 detective. I think it was just a lateral transfer.</p> <p>15 Q. I see. So I've heard from some of the other</p> <p>16 officers that detectives would go to various homicide</p> <p>17 schools, training programs, things like that, and -- and</p> <p>18 so is that the kind of training that you participated in</p> <p>19 as a detective in crimes against persons?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. While you were a detective, the El Paso</p> <p>22 Police Department did not itself have, for example, its</p> <p>23 own curriculum for new detectives; is that right?</p> <p>24 A. I'm -- I'm not sure I understood your question.</p> <p>25 Q. Sure. So it wasn't the case that you became a</p>

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1 detective, and just like when you became a new officer
2 you went to the academy, the police department said,
3 "Well, we've got a detective academy, and you're --
4 we've got this training that you have to go through now
5 that you're a new detective."

6 A. No.

7 Q. How long did you remain in crimes against
8 persons?

9 A. Until, I think, July of '94, 1994.

10 Q. What was your next assignment?

11 A. I went back to patrol, this time at a new
12 station that they had just opened up on the east side,
13 and I was a sergeant.

14 Q. And there was another exam and promotion to
15 become a sergeant?

16 A. Yes, sir.

17 Q. And how long did you remain a sergeant on
18 patrol on the east side?

19 A. I think for right around three years.

20 Q. What was your next assignment after that?

21 A. After that, it was juvenile investigations.

22 Q. What is the -- what is the mission of the
23 juvenile investigations unit?

24 A. At that time, it was changing. It did a couple
25 of different programs. One of them was the SHOCAPs

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1 program, so they focused on serious habitually offending
2 juveniles. And then there was also -- they were adding
3 some units to it, and they wanted to start up a child
4 abuse unit, so that's what we did. We started a unit
5 and basically converted that juvenile investigations
6 into crimes against children and the -- the name changed
7 very shortly after I went there.

8 Q. And how long did you remain in juvenile
9 investigations?

10 A. At juvenile investigations, crimes against
11 children, right up to about 2002.

12 Q. Did you say "2002"?

13 A. Yes, sir. I believe so.

14 Q. What was your next assignment?

15 A. I promoted to lieutenant.

16 Q. And what were your responsibilities as a
17 lieutenant?

18 A. I went back to patrol for about a month to two
19 months, somewhere in that neighborhood, and then I went
20 to the planning division, and I assumed command of the
21 planning division.

22 Q. What was your next assignment after the
23 planning division?

24 A. Auxiliary -- auxiliary support, and I was
25 placed as an acting regional commander and then placed

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1 into auxiliary support.

2 Q. And then about when did you become -- did you
3 join the auxiliary support as an acting regional
4 commander?

5 A. Gosh, I want to say maybe a year after I went
6 to planning.

7 Q. And did you have a further assignment after
8 auxiliary support?

9 A. Yes, I did.

10 Q. And what was that?

11 A. I was at the Pebble Hills Regional Command for
12 a little while, and then I took the last command that I
13 had, which was the Northeast Regional Command.

14 Q. And then from Northeast Regional Command, did
15 you then retire from the El Paso Police Department?

16 A. I did.

17 Q. And when was that?

18 A. In 2008.

19 Q. Okay. And what -- what work have you held
20 since leaving the El Paso Police Department in 2008?

21 A. I worked as an adjunct instructor at Park
22 University, as the executive director of their campus
23 for -- on Fort Bliss for about five years and also as an
24 adjunct instructor over at Dona Ana Community College,
25 which is attached to New Mexico State.

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1 And then I -- in 2013, I think, I went to
2 El Paso Independent School District to manage a program
3 that they had there. And from there, I became a --
4 after a couple of years, I became a certified teacher,
5 and I started teaching history at Bowie High School in
6 El Paso.

7 And then after a couple of years of that,
8 then I went to go teach career and technical education.
9 I acquired an additional certification, and then I
10 taught for technical education at Pebble Hills High
11 School 2017, '18, and '19. And then in 20- -- the
12 beginning -- January of 2020, I started working for the
13 Veterans Commission.

14 Q. And what do you do with the Veterans
15 Commission?

16 A. I just help soldiers that are transitioning out
17 of military service to find employment.

18 Q. And is that what you do for employment today?

19 A. That's what I do for employment today, yes,
20 sir.

21 Q. Okay. When you were in the -- in the El Paso
22 Police Department, did you ever hold off-duty work of
23 any kind?

24 A. I did. I did adjuncting work at Park
25 University. And then when I was younger, I would work

<p style="text-align: right;">Page 26</p> <p>1 an occasional football game and sometimes security at</p> <p>2 Walmart right before Christmas just to get a little</p> <p>3 extra money for my family.</p> <p>4 Q. Sure.</p> <p>5 It sounds like you're well rooted in</p> <p>6 El Paso, but do you currently have any plans to move out</p> <p>7 of the state?</p> <p>8 A. I do not, no.</p> <p>9 Q. Or any plans to move out of the country?</p> <p>10 A. No, sir.</p> <p>11 Q. So you -- I want to ask some questions about</p> <p>12 your time at crimes against persons and your trainings</p> <p>13 and practices as a detective. As a detective, would you</p> <p>14 agree that it's critical in an investigation to keep an</p> <p>15 open mind?</p> <p>16 A. Yes.</p> <p>17 Q. And that it's necessary to always follow the</p> <p>18 evidence objectively.</p> <p>19 A. Yes.</p> <p>20 Q. And that you should always be open to the idea</p> <p>21 of being wrong.</p> <p>22 A. Of being what?</p> <p>23 Q. Of being wrong.</p> <p>24 A. Yes.</p> <p>25 Q. And are you trained to never engage in tunnel</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yes, sir.</p> <p>2 Q. So when you were an El Pa- -- an El Paso</p> <p>3 detective, there were certain rules about how you had to</p> <p>4 engage with juveniles; is that right?</p> <p>5 A. Yes.</p> <p>6 Q. And there were particular protections that</p> <p>7 applied to juvenile suspects; is that fair?</p> <p>8 A. Yes.</p> <p>9 Q. And what -- if -- as a detective, if you wanted</p> <p>10 to interview a juvenile suspect, what protections did</p> <p>11 you have to observe?</p> <p>12 A. If I wanted to interview them?</p> <p>13 Q. Yes.</p> <p>14 A. So, generally, a police officer can talk to</p> <p>15 anybody, so -- I mean, if they'll talk to them. So it</p> <p>16 depends. Are you talking about as a witness, a suspect,</p> <p>17 or...</p> <p>18 Q. I'm talking about a suspect in particular, a</p> <p>19 juvenile who you believed may have committed the crime</p> <p>20 that you are investigating.</p> <p>21 A. Then so that -- that law, I think, was</p> <p>22 developing back then, and it was starting to change and</p> <p>23 generally become, I think, more protective of juveniles.</p> <p>24 And so as I remember it back then -- and I know you're</p> <p>25 aware of Charlie Ortega, the -- I think it was common at</p>
<p style="text-align: right;">Page 27</p> <p>1 vision?</p> <p>2 A. They -- in trainings, they will generally tell</p> <p>3 you keep an open mind.</p> <p>4 Q. And would you agree that the most important</p> <p>5 thing in an investigation is to avoid arresting the</p> <p>6 wrong person?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And that that's even more important than</p> <p>9 getting the right person in an investigation.</p> <p>10 A. I think that's true.</p> <p>11 Q. Okay. And does that philosophy guide all of</p> <p>12 your interviews, whether with suspects or with</p> <p>13 witnesses?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And do you agree that staying objective</p> <p>16 is critical so you can fairly evaluate all the evidence</p> <p>17 and make sure you don't miss information that may be</p> <p>18 important?</p> <p>19 A. Yes.</p> <p>20 Q. And do you agree that it's important as a</p> <p>21 detective to be both thorough and unbiased?</p> <p>22 A. Yes.</p> <p>23 Q. And do you agree that by remaining thorough and</p> <p>24 unbiased, you can ensure that you protect the innocent,</p> <p>25 as well as convict the guilty?</p>	<p style="text-align: right;">Page 29</p> <p>1 that particular point to assign a juvenile investigation</p> <p>2 officer on serious cases so that they could monitor and</p> <p>3 make sure that the different rules were being followed.</p> <p>4 Q. Sure. So when speaking to a juvenile suspect,</p> <p>5 it would have been appropriate to engage a juvenile</p> <p>6 officer to ensure that protections are followed; is that</p> <p>7 fair?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And if you want to take a statement from a</p> <p>10 juvenile that may incriminate them, it's necessary to</p> <p>11 take them to a magistrate judge first to receive their</p> <p>12 warnings; is that true?</p> <p>13 A. I believe so, yes, sir.</p> <p>14 Q. And because of that, it's necessary, before you</p> <p>15 do substantive questioning of a juvenile who may be a</p> <p>16 suspect, to take them to the magistrate first; is that</p> <p>17 right?</p> <p>18 A. It could be.</p> <p>19 Q. Because you don't -- you don't want to be in a</p> <p>20 position where you've got a confession you can't use</p> <p>21 because they didn't get their magistrate warnings first;</p> <p>22 is that fair?</p> <p>23 A. True.</p> <p>24 Q. And after you've asked the questions, if they</p> <p>25 implicate themselves, it may be too late -- I'm sorry.</p>

<p style="text-align: right;">Page 30</p> <p>1 MR. JIM DARNELL: Hold on. Something's</p> <p>2 beeping.</p> <p>3 THE WITNESS: Yeah. No. It's all right.</p> <p>4 MR. JIM DARNELL: Okay.</p> <p>5 MR. HILKE: No problem.</p> <p>6 Q. (BY MR. HILKE) And so are you familiar with a</p> <p>7 El Paso Police Department policy from when you were a</p> <p>8 detective saying that youth services should actually</p> <p>9 conduct the interrogations of juveniles?</p> <p>10 A. I -- I'd have to be refreshed on that policy</p> <p>11 and -- and I haven't heard that term "youth services"</p> <p>12 for a really long time. I mean, that -- that is a very</p> <p>13 old term for the department.</p> <p>14 Q. I understand.</p> <p>15 I'm going to share an exhibit with you now.</p> <p>16 I will mark this Exhibit 1. This is a document starting</p> <p>17 at City 21495.</p> <p>18 (Exhibit 01 marked.)</p> <p>19 Q. And, sir, looking at this document, is this</p> <p>20 what the El Paso Police De- -- how the El Paso Police</p> <p>21 Department's policies appeared at the time you were a</p> <p>22 detective?</p> <p>23 A. I'm not sure of the effective date of that --</p> <p>24 that policy, but it could be.</p> <p>25 Q. I'm scrolling down in the document. Actually,</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Yes, sir.</p> <p>2 A. I don't -- I'm not sure if I did or not. I</p> <p>3 could have.</p> <p>4 Q. Sure.</p> <p>5 In general, when you interrogated juvenile</p> <p>6 suspects, were you the one asking the questions?</p> <p>7 A. Usually, yes.</p> <p>8 Q. And if this was the department's policy at the</p> <p>9 time, do you have any explanation for why you wouldn't</p> <p>10 have had youth services or a juvenile officer conduct</p> <p>11 those interrogations?</p> <p>12 MR. ALMANZAN: Objection, lack of</p> <p>13 foundation, calls for speculation.</p> <p>14 Q. (BY MR. HILKE) You can answer.</p> <p>15 A. Okay. Can you repeat the question again,</p> <p>16 please?</p> <p>17 Q. Yes, sir.</p> <p>18 The question is, do you have any</p> <p>19 explanation for why you wouldn't have had youth services</p> <p>20 or a juvenile officer conduct the actual questioning of</p> <p>21 juvenile suspects instead of you?</p> <p>22 A. If --</p> <p>23 MR. ALMANZAN: Objection, lack of</p> <p>24 foundation and calls for speculation.</p> <p>25 Q. (BY MR. HILKE) Go ahead.</p>
<p style="text-align: right;">Page 31</p> <p>1 I now am at Bates City 21502. And I'm trying to...</p> <p>2 So I'm showing you at the bottom of this</p> <p>3 page where it says "7.02.009 Interrogation." And do you</p> <p>4 note the date January 1992 at the bottom left of this</p> <p>5 document?</p> <p>6 A. Yes.</p> <p>7 Q. And do you see where it says in this section,</p> <p>8 "In accordance with the Texas Family Code, a juvenile is</p> <p>9 advised of his constitutional rights before being</p> <p>10 interrogated. When a juvenile is to be interrogated at</p> <p>11 his home, parental permission is requested prior to</p> <p>12 interrogation. If denied, the interrogation is not</p> <p>13 conducted. When possible, interrogation of a juvenile</p> <p>14 suspect is conducted by youth services."</p> <p>15 Do you see that on this document?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. And to your knowledge, did detectives</p> <p>18 at -- well, when you were a detective at crimes against</p> <p>19 persons and -- did you ever interrogate juvenile</p> <p>20 suspects?</p> <p>21 A. Yes, I did.</p> <p>22 Q. And did you -- did you involve an officer from</p> <p>23 youth services or any juvenile service to conduct those</p> <p>24 interrogations instead of you?</p> <p>25 A. Instead of me?</p>	<p style="text-align: right;">Page 33</p> <p>1 MR. TSCHIRHART: And can we have an</p> <p>2 agreement on the record that the objection of one is</p> <p>3 good for all?</p> <p>4 MR. HILKE: Yes. We can, yes.</p> <p>5 MR. TSCHIRHART: Thank you.</p> <p>6 Q. (BY MR. HILKE) And, I guess, just for -- for</p> <p>7 the deposition, going forward, you may hear counsel</p> <p>8 making objections for the record. Unless your attorney</p> <p>9 instructs you not to answer, you should still go ahead</p> <p>10 and answer the question. Does that make sense?</p> <p>11 A. Yes.</p> <p>12 Q. And, yes, the -- the question is, do you have</p> <p>13 an explanation for why you wouldn't have had youth</p> <p>14 services or a juvenile officer interrogate juvenile</p> <p>15 suspects when you were a detective?</p> <p>16 A. And I -- I think that -- I'm -- I'm not really</p> <p>17 sure what -- what you're after. I -- are you saying</p> <p>18 like a actual interrogation, if I think somebody -- or I</p> <p>19 have cause to think somebody did something, a juvenile?</p> <p>20 Q. Yes. I'm talking about situations where you</p> <p>21 interrogated a juvenile suspect instead of juvenile</p> <p>22 services or -- youth services or a juvenile officer</p> <p>23 being the one asking the questions.</p> <p>24 A. I'm -- I'm still not entirely clear on that.</p> <p>25 Q. So as -- as a detective, you interrogated</p>

<p style="text-align: right;">Page 34</p> <p>1 juvenile suspects; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. You actually asked them the questions you</p> <p>4 wanted them to answer, right?</p> <p>5 A. Yes.</p> <p>6 Q. This policy suggests that, when possible,</p> <p>7 interrogations should be done by youth services instead.</p> <p>8 Do you have an explanation for why you didn't do that</p> <p>9 instead?</p> <p>10 A. I mean --</p> <p>11 MR. JIM DARNELL: Object to speculation.</p> <p>12 Go ahead.</p> <p>13 A. It -- probably because the youth services</p> <p>14 wouldn't have known the details of the case.</p> <p>15 Q. (BY MR. HILKE) Okay. Could you have given</p> <p>16 them the details of the case?</p> <p>17 A. I could have, but -- and I might have on</p> <p>18 occasion on -- depending on what kind of a case it was.</p> <p>19 Q. Is it fair to say that in practice, it was not</p> <p>20 expected that you would turn over every juvenile</p> <p>21 interrogation to be conducted by a youth services</p> <p>22 officer?</p> <p>23 A. Yes.</p> <p>24 Q. And is it -- was it also the policy when you</p> <p>25 were a detective that a juvenile suspect needed to be</p>	<p style="text-align: right;">Page 36</p> <p>1 the practice to then take them back to the juvenile</p> <p>2 probation department?</p> <p>3 A. I believe it was.</p> <p>4 Q. Okay. And the confession is -- is actually</p> <p>5 taken to a magistrate so the juvenile can affirm that</p> <p>6 it's their confession in the presence of the magistrate;</p> <p>7 is that right?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Is it your understanding that after the</p> <p>10 confession was taken, it's appropriate for officers to</p> <p>11 take a juvenile -- and strike that. I'm going to ask it</p> <p>12 better.</p> <p>13 After a juvenile has endorsed their</p> <p>14 confession to the magistrate, is it appropriate for</p> <p>15 officers to take that juvenile anywhere except the</p> <p>16 juvenile probation department?</p> <p>17 MR. ALMANZAN: Objection, calls for</p> <p>18 speculation, lack of foundation.</p> <p>19 Q. (BY MR. HILKE) Go ahead.</p> <p>20 A. So what you're asking me is, once they go to</p> <p>21 the judge and they're going back to JPD, is it</p> <p>22 appropriate for them to go anywhere else?</p> <p>23 Q. Yes, sir.</p> <p>24 A. I wouldn't think so.</p> <p>25 Q. I'm going to stop sharing this exhibit now.</p>
<p style="text-align: right;">Page 35</p> <p>1 taken to the juvenile probation department before giving</p> <p>2 a confession?</p> <p>3 A. Yes.</p> <p>4 Q. I'm going to scroll down one page. We're still</p> <p>5 on Exhibit 1 here. This is at City 21503. I'd like to</p> <p>6 put your attention on point B. here. Do you see where</p> <p>7 it says, "Once the child has been transported to JPD,</p> <p>8 the intake officer has ultimate control over the</p> <p>9 investigative function of the case"?</p> <p>10 A. Yes.</p> <p>11 Q. And was that your experience in practice, that</p> <p>12 at JPD the intake officer took control over the</p> <p>13 investigative function of the case?</p> <p>14 A. I never saw them take control of an</p> <p>15 investigation.</p> <p>16 Q. I'm going to stop sharing this document.</p> <p>17 Actually, one moment, please. Yes.</p> <p>18 I'm going to scroll down one additional</p> <p>19 page. This is at City 21504. This is still in the</p> <p>20 section of that juvenile confe- -- confessions. Do you</p> <p>21 see under item G. where it says, "The juvenile, along</p> <p>22 with the original confession, is taken back to juvenile</p> <p>23 probation department"?</p> <p>24 A. Yes.</p> <p>25 Q. After a juvenile's confession was taken, was it</p>	<p style="text-align: right;">Page 37</p> <p>1 Were you aware of a policy that parental</p> <p>2 permission needed to be obtained before taking a</p> <p>3 statement from juveniles?</p> <p>4 MR. ALMANZAN: Objection, misstates the</p> <p>5 evidence, assumes facts not in evidence.</p> <p>6 Q. (BY MR. HILKE) Go ahead.</p> <p>7 A. I am not aware that -- of an -- of a policy</p> <p>8 that says that.</p> <p>9 Q. Okay. Let me -- let me share -- and, actually,</p> <p>10 I'm going to share Exhibit 1 again with you for a moment</p> <p>11 here.</p> <p>12 So I'm scrolling down to City 21505. Do</p> <p>13 you see at the top up here where it says "7.02.012</p> <p>14 Witness Statement"?</p> <p>15 A. Yes.</p> <p>16 Q. All right. And do you see here where it reads,</p> <p>17 "Before a juvenile can give a witness statement, the</p> <p>18 officer first obtains permission from a parent or a</p> <p>19 legal guardian allowing the juvenile to go to the</p> <p>20 station, give a statement, and appear in court. When</p> <p>21 practical, parental permission is in writing. If</p> <p>22 permission is denied, there is no statement taken."</p> <p>23 Do you see that on the policy here?</p> <p>24 A. I do.</p> <p>25 Q. Okay. And is that consistent with your</p>

<p style="text-align: right;">Page 38</p> <p>1 understanding of what -- or strike that.</p> <p>2 Was that your practice as a detective, to</p> <p>3 get parental permission before taking juvenile</p> <p>4 statements?</p> <p>5 A. Witness statements, yes.</p> <p>6 Q. Witness statements.</p> <p>7 And were you aware of any exceptions to</p> <p>8 this policy regarding witness -- juvenile witness</p> <p>9 statements?</p> <p>10 A. Maybe a res gestae statement.</p> <p>11 Q. I'm sorry. Will you say that again?</p> <p>12 A. Maybe a res gestae statement.</p> <p>13 Q. And what is a res gestae statement?</p> <p>14 A. Spontaneous utterance.</p> <p>15 Q. Sure. If a juvenile shouts something out</p> <p>16 unexpectedly, you don't have to shut your ears, right?</p> <p>17 A. True.</p> <p>18 Q. But you're not aware of any exceptions when you</p> <p>19 would intentionally engage in taking a witness statement</p> <p>20 from a juvenile; is that fair?</p> <p>21 A. In violation of the policy?</p> <p>22 Q. Yes. I mean, were you aware of any exceptions,</p> <p>23 other than a spontaneous utterance, that would allow you</p> <p>24 to take a juvenile witness statement without parental</p> <p>25 permission?</p>	<p style="text-align: right;">Page 40</p> <p>1 initial warnings from the magistrate.</p> <p>2 A. So probably -- probably not.</p> <p>3 Q. Okay. And because it is -- a juvenile suspect</p> <p>4 has to see the magistrate before you start taking a</p> <p>5 confession from them; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. And then after they've given a confession, they</p> <p>8 have to go back to the magistrate to endorse it in front</p> <p>9 of the magistrate; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And so the substantive questioning</p> <p>12 asking them about their culpability can't happen until</p> <p>13 that first visit to the magistrate; is that right?</p> <p>14 A. They probably shouldn't.</p> <p>15 Q. Say that again.</p> <p>16 A. They probably shouldn't.</p> <p>17 Q. Okay. And when you say "they probably</p> <p>18 shouldn't," what was -- what was the practice among</p> <p>19 detectives when you were a detective?</p> <p>20 A. When this new -- and it -- and I think it was a</p> <p>21 relatively new way to handle juveniles from what we had</p> <p>22 previously done, and so my experience was not extensive</p> <p>23 because I -- I don't think I worked a lot of cases</p> <p>24 involving juveniles at crimes against persons. Not a</p> <p>25 ton of them anyways. Probably a few. So what did other</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Not according to that policy.</p> <p>2 Q. What about according to your experience as a</p> <p>3 detective?</p> <p>4 A. No, I can't -- I don't remember offhand</p> <p>5 anything like that.</p> <p>6 Q. I'm going to stop sharing this now.</p> <p>7 And in -- in addition to taking a juvenile</p> <p>8 suspect to the magistrate, were detectives also required</p> <p>9 to read juvenile warnings before interrogating</p> <p>10 juveniles?</p> <p>11 A. I -- I believe so. I think most people did</p> <p>12 that.</p> <p>13 Q. And according to El Paso's policies, was it</p> <p>14 inappropriate to start questioning a juvenile suspect to</p> <p>15 get into the substance of what you wanted to ask them</p> <p>16 before you took them to the magistrate?</p> <p>17 A. I don't re- -- the -- if -- I'm trying to</p> <p>18 remember the steps that they had to go through for each</p> <p>19 one, but generally speaking, probably not.</p> <p>20 Q. Meaning that you would not ask substantive</p> <p>21 questions to a juvenile suspect before they were taken</p> <p>22 to the magistrate?</p> <p>23 A. And you're talking about before they -- not</p> <p>24 after they sign their statement?</p> <p>25 Q. Yes, sir. I mean before they receive their</p>	<p style="text-align: right;">Page 41</p> <p>1 guys do? I'm not -- I'm not sure. But they should have</p> <p>2 followed policy.</p> <p>3 Q. Sure. And -- and what about -- what about you?</p> <p>4 When you were a detective, did you have any -- was it</p> <p>5 your understanding that before substantive questioning</p> <p>6 of a juvenile suspect, a juvenile suspect needed to be</p> <p>7 taken to a magistrate to get their warnings?</p> <p>8 A. Yes.</p> <p>9 Q. In your career, when and where did you receive</p> <p>10 training in conducting interviews and interrogations?</p> <p>11 A. Just in general?</p> <p>12 Q. Yes, sir.</p> <p>13 A. I don't remember exactly when, but I know I</p> <p>14 received that kind of training.</p> <p>15 Q. Was that the kind of training you received --</p> <p>16 sort of the continual training that the -- strike that.</p> <p>17 Did you attend trainings on those subjects</p> <p>18 as a detective?</p> <p>19 A. Yes.</p> <p>20 Q. Were you trained in the Reid method of</p> <p>21 interrogation?</p> <p>22 A. The Reid method?</p> <p>23 Q. Yes, sir.</p> <p>24 A. I don't think I was ever formally trained in</p> <p>25 that. I think I might have read about it. But I -- I</p>

<p style="text-align: right;">Page 42</p> <p>1 don't remember, honestly, if I was formally -- I</p> <p>2 don't -- I don't believe I was.</p> <p>3 Q. Were you trained to thoroughly investigate a</p> <p>4 crime before conducting an interrogation?</p> <p>5 MR. JIM DARNELL: Object to form. Object</p> <p>6 as I don't understand your question.</p> <p>7 Q. (BY MR. HILKE) Did you understand my question?</p> <p>8 MR. JIM DARNELL: No, I don't understand.</p> <p>9 MR. HILKE: That was a -- that was a</p> <p>10 question for the witness.</p> <p>11 A. I -- I -- what I think is I think that that --</p> <p>12 you could not use that as a consistent approach to say</p> <p>13 you're going to thoroughly -- there -- investigations</p> <p>14 don't happen like that.</p> <p>15 Q. (BY MR. HILKE) Okay. So it was -- it was not</p> <p>16 your training to conduct a thorough investigation before</p> <p>17 conducting an interrogation; is that correct?</p> <p>18 A. As thorough as possible.</p> <p>19 Q. As thorough as possible?</p> <p>20 Is it important to be absolutely sure that</p> <p>21 when you're interrogating someone, you've identified the</p> <p>22 correct suspect?</p> <p>23 A. I'm -- I'm not sure what you mean by "the</p> <p>24 correct suspect."</p> <p>25 Q. Sure.</p>	<p style="text-align: right;">Page 44</p> <p>1 lead to false assumptions of guilt?</p> <p>2 A. Generally speaking, yes.</p> <p>3 Q. Okay. And have you received training that</p> <p>4 there's a danger of seeking a confession from an</p> <p>5 innocent person if you assume that they're guilty too</p> <p>6 soon?</p> <p>7 A. I don't know if that was an actual training</p> <p>8 curriculum, but I have a general knowledge of that.</p> <p>9 Yes, it's true.</p> <p>10 Q. And are your -- are you trained that in an</p> <p>11 interrogation, you go in with the assumption that the</p> <p>12 person you're interrogating is guilty?</p> <p>13 MR. JIM DARNELL: Object, calls for</p> <p>14 speculation. Are you talking about this case or every</p> <p>15 case or some case in particular?</p> <p>16 MR. HILKE: Thanks.</p> <p>17 Q. (BY MR. HILKE) Sir, I'm talking about your</p> <p>18 training in investigations and interrogations.</p> <p>19 A. Well, and I think as I said before, you would</p> <p>20 have some basis for thinking that the person that you're</p> <p>21 going to interrogate is responsible for the crime that</p> <p>22 you're investigating.</p> <p>23 Q. When you conduct an interrogation, is it your</p> <p>24 training to try to see if you can obtain a confession?</p> <p>25 A. Well, you're not going to turn it away.</p>
<p style="text-align: right;">Page 43</p> <p>1 Is it appropriate to interrogate someone</p> <p>2 who you don't believe to be a suspect?</p> <p>3 A. I'm not sure why I would do that.</p> <p>4 Q. Interrogation is something you do once you've</p> <p>5 identified that someone is a suspect; is that fair?</p> <p>6 A. Or -- or, hopefully, you have some -- a strong</p> <p>7 suspicion of it.</p> <p>8 Q. Uh-huh. And when you say "a strong suspicion,"</p> <p>9 do you mean when you have evidence pointing towards them</p> <p>10 or something else?</p> <p>11 A. Either -- either evidence or testimony.</p> <p>12 Q. According to your training, what's the</p> <p>13 difference between an interview and an interrogation?</p> <p>14 A. With an interrogation, I think you're</p> <p>15 specifically questioning somebody you think actually</p> <p>16 committed the crime.</p> <p>17 Q. Were you trained that when you interrogate</p> <p>18 someone -- let me ask a different question.</p> <p>19 According to your training, what's the goal</p> <p>20 of an interrogation?</p> <p>21 A. The goal of an interrogation, generally</p> <p>22 speaking, would be to discover evidence, discover the</p> <p>23 facts of a case.</p> <p>24 Q. And have you received any training about how</p> <p>25 focusing on one person to the exclusion of others can</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. What in your training are the primary</p> <p>2 techniques of interrogation?</p> <p>3 A. It's much like an interview, but I think a</p> <p>4 little more direct.</p> <p>5 Q. What do you mean by "more direct"?</p> <p>6 A. You ask the questions of the person and perhaps</p> <p>7 even accuse him of it.</p> <p>8 Q. Okay. And what is your training on using</p> <p>9 accusations in an interrogation?</p> <p>10 A. I think just, again, general interview,</p> <p>11 interrogation-style training.</p> <p>12 Q. Uh-huh.</p> <p>13 And are you trained to use accusations of</p> <p>14 lying during an interrogation?</p> <p>15 A. No. I mean, just to accuse -- go and accuse</p> <p>16 him of lying? I think you might do that if you thought</p> <p>17 they're lying.</p> <p>18 Q. And are you trained to repeat accusations</p> <p>19 multiple times in an interrogation?</p> <p>20 A. No.</p> <p>21 Q. Was it your practice to repeat accusations</p> <p>22 multiple times in an interrogation?</p> <p>23 A. I might have done so in the past.</p> <p>24 Q. Okay. And are you trained to cut off denials</p> <p>25 if a suspect is -- is denying their involvement?</p>

<p style="text-align: right;">Page 46</p> <p>1 A. No.</p> <p>2 Q. And was it your practice to cut off denials in</p> <p>3 interrogations?</p> <p>4 A. Generally, no.</p> <p>5 Q. And were you trained to use false evidence</p> <p>6 ploys?</p> <p>7 A. No.</p> <p>8 Q. Okay. Did you use false evidence ploys?</p> <p>9 A. No.</p> <p>10 Q. And were you trained to put pressure on</p> <p>11 suspects to increase their anxiety?</p> <p>12 A. Well, I think they're stressed anyways when</p> <p>13 you're interviewing them, and I think that could be an</p> <p>14 advantage in an interview.</p> <p>15 Q. Was it your training to attempt to use the</p> <p>16 stress a suspect is feeling to help with your</p> <p>17 investigation?</p> <p>18 A. I'm sorry. Something happened to your -- your</p> <p>19 feed.</p> <p>20 Q. That's fine.</p> <p>21 Did -- was it your training to use the</p> <p>22 stress that suspects were under in an interrogation to</p> <p>23 assist you in your questioning?</p> <p>24 A. I don't think -- I don't think that was in</p> <p>25 training.</p>	<p style="text-align: right;">Page 48</p> <p>1 they don't tell you what happened?</p> <p>2 A. No.</p> <p>3 Q. Are you trained to suggest that their chance to</p> <p>4 tell you who really did it or to -- to minimize their</p> <p>5 involvement comes only if they confess to you?</p> <p>6 A. Can you repeat that?</p> <p>7 Q. Okay. Was it your training to suggest that a</p> <p>8 suspect can -- you know, for example, that if they</p> <p>9 don't -- let me start over.</p> <p>10 Was it consistent with your training to say</p> <p>11 that a suspect, for example, had been identified as</p> <p>12 involved in the crime and their chance to tell you that</p> <p>13 someone else did it was as you were interrogating them?</p> <p>14 A. No.</p> <p>15 Q. Okay. And was it your practice to do that?</p> <p>16 A. No.</p> <p>17 MR. JIM DARNELL: Wally, can we take a --</p> <p>18 we've been going about an hour. Can we take a short</p> <p>19 break?</p> <p>20 MR. HILKE: Yes, we can. Let's go off the</p> <p>21 record.</p> <p>22 THE VIDEO TECHNICIAN: Okay. We are off</p> <p>23 the record, and the time is 11:00- -- or I'm sorry --</p> <p>24 10:55 a.m. No. 11:05 a.m. I apologize.</p> <p>25 (Break taken from 10:05 a.m. to 10:16 a.m.)</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Was it something you learned in practice?</p> <p>2 A. Well, I would just say that I was aware that</p> <p>3 very often people were stressed.</p> <p>4 Q. Are you trained to use inducements, suggesting</p> <p>5 that a suspect may benefit if they stopped lying and</p> <p>6 admit to their involvement?</p> <p>7 A. No.</p> <p>8 Q. And was it your practice to use inducements?</p> <p>9 A. No.</p> <p>10 Q. And was it your training or practice to suggest</p> <p>11 that, for example, the prosecutor might look well on a</p> <p>12 suspect if they confessed?</p> <p>13 A. No.</p> <p>14 Q. Or that the judge might look well on them?</p> <p>15 A. No.</p> <p>16 Q. Was it your training to suggest it anyway, that</p> <p>17 it might benefit the suspect to confess to you?</p> <p>18 A. No.</p> <p>19 Q. And was it your practice to do so?</p> <p>20 A. No.</p> <p>21 Q. Are you trained to suggest that a suspect may</p> <p>22 be able to minimize their culpability? For example --</p> <p>23 let me ask that a different way.</p> <p>24 Are you trained to suggest that the</p> <p>25 suspect's involvement in a crime would look worse if</p>	<p style="text-align: right;">Page 49</p> <p>1 THE VIDEO TECHNICIAN: We are back on the</p> <p>2 record for the deposition of Scott Graves being</p> <p>3 conducted by videoconference. My name is Jessica Chase.</p> <p>4 Today is July 28th, 2022, and the time is 11:16 a.m.</p> <p>5 Counsel, you may proceed.</p> <p>6 Q. (BY MR. HILKE) According to your training,</p> <p>7 what's the difference between an incriminating statement</p> <p>8 and an admission?</p> <p>9 A. I -- I don't think I recall like training on</p> <p>10 that.</p> <p>11 Q. Did you receive any training on the difference</p> <p>12 between an admission and a confession?</p> <p>13 A. I -- I would think of a confession as an</p> <p>14 admission.</p> <p>15 Q. You would think of that as basically identical?</p> <p>16 A. Yes.</p> <p>17 Q. Did you receive any training on how to make</p> <p>18 sure that suspects were not psychologically coerced?</p> <p>19 A. I -- I don't recall training like that.</p> <p>20 Q. You didn't receive any training on how to make</p> <p>21 sure you didn't put too much pressure on suspects during</p> <p>22 interrogations; is that fair?</p> <p>23 A. I think we were trained on coercion, but I'm</p> <p>24 not sure I heard it that way from you. I'm not sure</p> <p>25 that I understood it the way that you said it initially.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. I -- I see. So you did receive training on how</p> <p>2 to avoid coercion of suspects; is that -- is that right?</p> <p>3 A. It's -- I don't think it was training on how to</p> <p>4 avoid coercion. I think it was don't coerce. You know,</p> <p>5 don't -- don't engage in coercion.</p> <p>6 Q. Okay. So your training included a principle</p> <p>7 which is that it's inappropriately -- it's inappropriate</p> <p>8 to coerce suspects; is that fair?</p> <p>9 A. Yes.</p> <p>10 Q. But then in terms of how to avoid coercing</p> <p>11 them, that wasn't a part of your training; is that fair?</p> <p>12 A. Well, I think what was part was examples of</p> <p>13 coercion, probably.</p> <p>14 Q. Okay. What -- what kind of examples of</p> <p>15 coercion were used to train you on what to avoid doing?</p> <p>16 A. Don't -- don't make promises. Don't -- you</p> <p>17 know, don't promise for -- that the court's going to act</p> <p>18 in a given way or a prosecutor is going to act in a</p> <p>19 given way. Those would certainly be something that you</p> <p>20 shouldn't do.</p> <p>21 Q. Anything else?</p> <p>22 A. Don't threaten.</p> <p>23 Q. Were you trained that it's a good practice to</p> <p>24 record interrogations in their entirety?</p> <p>25 A. I was not trained in that.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Okay. And in 1993, do you ever record your</p> <p>2 interrogations as a detective?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. It just wasn't the practice.</p> <p>6 Q. Was there any policy at the department</p> <p>7 preventing you from recording interrogations?</p> <p>8 A. To prevent?</p> <p>9 Q. Yes, sir.</p> <p>10 A. I don't -- I don't know. I don't think so.</p> <p>11 I'm -- I'm not sure.</p> <p>12 Q. As a detective, did you receive training on how</p> <p>13 to document your work?</p> <p>14 A. Yes.</p> <p>15 Q. And did you take notes during investigations?</p> <p>16 A. Yes. Like on a notebook, you mean?</p> <p>17 Q. Yeah.</p> <p>18 A. Yeah.</p> <p>19 Q. And so did you carry a notebook with you as</p> <p>20 you -- as you investigated a case?</p> <p>21 A. Typically, yes.</p> <p>22 Q. And did you make notes contemporaneous with</p> <p>23 your investigation or after the fact?</p> <p>24 A. Just during the investigation.</p> <p>25 Q. And when you interrogated a suspect, did you</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And were you trained that it's important to</p> <p>2 take good notes of what happens during an interrogation?</p> <p>3 A. Typically, statements, the -- you know, a</p> <p>4 confession.</p> <p>5 Q. And so a state- -- a statement and a</p> <p>6 confession, is it correct that that should include all</p> <p>7 the pertinent information a suspect gives you?</p> <p>8 A. I'm -- I'm not sure what -- I mean, about the</p> <p>9 crime, yes, but everything that they tell you, I don't</p> <p>10 think it's going to go in the confession. If they're</p> <p>11 talking about their -- their high school, or something</p> <p>12 like that, I mean, you're not going to put that --</p> <p>13 probably not put that stuff in.</p> <p>14 Q. Right. But if -- if it's information about the</p> <p>15 crime, it should go into their statement, right?</p> <p>16 A. It should, yeah, or whatever they -- whatever</p> <p>17 they tell you.</p> <p>18 Q. Right.</p> <p>19 And that's true whether that information</p> <p>20 points to their innocence or points to their guilt,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. You don't leave out information just to make a</p> <p>24 suspect look more guilty, do you?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 53</p> <p>1 take notes contemporaneously of what they were telling</p> <p>2 you?</p> <p>3 A. Yeah. That would be something, probably, yeah.</p> <p>4 Q. Okay. And you -- was it a requirement for you</p> <p>5 to document the pertinent information you learned -- or</p> <p>6 put that in -- strike that.</p> <p>7 Were you required to type up reports with</p> <p>8 the relevant information you found in your</p> <p>9 investigations?</p> <p>10 A. We wrote reports all the time. We did do that.</p> <p>11 Q. And was that a -- was that a requirement?</p> <p>12 A. There -- there's different kind of reports that</p> <p>13 are required, so, yeah, we would do an array of reports</p> <p>14 usually.</p> <p>15 Q. Sure.</p> <p>16 And is there -- so among the detectives, is</p> <p>17 there a case agent for every case that's being</p> <p>18 investigated?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And is it the case agent's job to make</p> <p>21 sure all the information relevant to the investigation</p> <p>22 is documented?</p> <p>23 A. Yes.</p> <p>24 Q. And -- and just for reference, I'm talking</p> <p>25 about the time you were a detective in crimes against</p>

<p style="text-align: right;">Page 54</p> <p>1 persons, and so if -- if -- let's just say that -- that</p> <p>2 to guess a reference period, if that's fair.</p> <p>3 Did -- and then was there a point in the</p> <p>4 course of an investigation where the case agent has to</p> <p>5 close out an investigation?</p> <p>6 A. Yes.</p> <p>7 Q. What is that point?</p> <p>8 A. Well, typically, they would close it out if it</p> <p>9 was cleared to close.</p> <p>10 Q. And a case -- and when you've completed all the</p> <p>11 arrests you make -- you expect to make in a case, is</p> <p>12 that a point the case is cleared?</p> <p>13 A. It would probably be, yes.</p> <p>14 Q. You don't have to wait for the prosecution to</p> <p>15 finish to clear a case, do you?</p> <p>16 A. I don't believe so, no.</p> <p>17 Q. And to clear a case, do all of the reports from</p> <p>18 that case have to be completed?</p> <p>19 A. You would think so, yeah. I think so.</p> <p>20 Q. Okay. Was that your experience that -- as a</p> <p>21 detective, did you work on cases where you were not the</p> <p>22 case agent?</p> <p>23 A. Yes.</p> <p>24 Q. And did you have the experience that a case</p> <p>25 agent telling you that he or she wanted to clear the</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. And you said "typically." Well, what did the</p> <p>2 sergeant do with the paperwork?</p> <p>3 A. Review it or pass it through to another process</p> <p>4 or through the system.</p> <p>5 Q. Uh-huh.</p> <p>6 And in -- in 1993, the reports you made, is</p> <p>7 it correct that those were typed reports?</p> <p>8 A. Yes.</p> <p>9 Q. And when typing a report, did you type -- was</p> <p>10 it a group effort to type the reports together, or did</p> <p>11 one officer type his or her own reports?</p> <p>12 A. Typically, you did your own.</p> <p>13 Q. Sure.</p> <p>14 Did you ever write a report for someone</p> <p>15 else that they put their name on?</p> <p>16 A. No.</p> <p>17 Q. Did anyone else ever write a report for you and</p> <p>18 you put your name on it?</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. And what did you do with your handwritten notes</p> <p>21 at the end of an investigation?</p> <p>22 A. Pretty much, when the notebook got full and the</p> <p>23 investigations were closed, then we destroyed them.</p> <p>24 Q. Sure. How did you destroy them?</p> <p>25 A. I -- I don't remember how we did that. I mean,</p>
<p style="text-align: right;">Page 55</p> <p>1 case and needed you to -- to make the reports?</p> <p>2 A. Yes.</p> <p>3 Q. And when you submitted reports, did you -- was</p> <p>4 it your practice to review them with anyone else before</p> <p>5 submitting them?</p> <p>6 A. No.</p> <p>7 Q. And after -- and you served as a -- as a case</p> <p>8 agent presumably on many investigations as a detective.</p> <p>9 Is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. And as a case agent, did you review all your</p> <p>12 reports with anyone when -- when you cleared one of your</p> <p>13 cases?</p> <p>14 A. Some -- sometimes I did. Sometimes I consulted</p> <p>15 with supervisors, you know, and would discuss a case.</p> <p>16 Q. Sure. So you could consult with supervisors</p> <p>17 when it was appropriate; is that fair?</p> <p>18 A. Or co-workers if -- if there was a senior guy</p> <p>19 that -- and you had a question, it wouldn't be</p> <p>20 inappropriate to talk to him about it.</p> <p>21 Q. Sure.</p> <p>22 Was it a policy that every time you cleared</p> <p>23 a case, someone had to review all of your reports?</p> <p>24 A. A policy? I'm not sure if it was a policy, but</p> <p>25 typically the paperwork would go to the sergeant.</p>	<p style="text-align: right;">Page 57</p> <p>1 I think they had shredding bins, and things like that,</p> <p>2 that they would -- because they didn't just let all the</p> <p>3 reports and things that were being thrown away out the</p> <p>4 door, you know. They -- so they had a process, I think,</p> <p>5 of grinding things.</p> <p>6 Q. Yeah. Were -- were there shredding bins in the</p> <p>7 crimes against persons office?</p> <p>8 A. I think so, yeah.</p> <p>9 Q. And there was -- in 1993, there was no policy</p> <p>10 requiring you to retain handwritten notes, was there?</p> <p>11 A. No.</p> <p>12 Q. And it wasn't your practice to do so, was it?</p> <p>13 A. No.</p> <p>14 Q. And did you have a practice as to how much time</p> <p>15 you would let pass or try to let pass before typing up a</p> <p>16 report?</p> <p>17 A. No. It was just contingent on the workload.</p> <p>18 Q. And is it your training that it's important to</p> <p>19 document things as they happen in an investigation?</p> <p>20 A. I would say it's preferable. In reality, I</p> <p>21 don't think it happens that way all the time, but it</p> <p>22 would probably be preferable.</p> <p>23 Q. And when you say "it's preferable," is that</p> <p>24 something you were trained on, or are you just speaking</p> <p>25 from your experience?</p>

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1 A. Just speaking from my experience.

2 Q. Do you remember any specific training on sort

3 of how -- writing up things soon after they happen in

4 investigations?

5 A. No.

6 Q. And is it your training that your reports

7 should be thorough as to what you learned during the

8 investigation?

9 A. Yeah. I mean, you're going to want to try to

10 make it as thorough as possible, and I know that that --

11 and I would say that's in the ideal world, but it's also

12 contingent on workload.

13 Q. So was it your practice that sometimes you

14 couldn't be as thorough as you wanted to in your reports

15 because you had too much else to do?

16 A. Can you say that again?

17 Q. Yeah.

18 Was it your practice that sometimes you

19 wouldn't include as much information in your reports as

20 you wanted to because your workload was too heavy?

21 A. I would say that probably happened some.

22 Q. Okay. When you -- was it your training that

23 when you write a report, you have to include both

24 information that points to a suspect's guilt and

25 information that points to their innocence?

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1 MR. JIM DARNELL: Wally, you're breaking up

2 some. I --

3 MR. HILKE: Yeah. If I -- if I speak up a

4 little, does that help?

5 MR. JIM DARNELL: Yes.

6 MR. HILKE: I'm going to try to speak --

7 I'm going to try to do what I said and speak loudly for

8 the record.

9 Q. (BY MR. HILKE) Is it -- is it your training

10 that when you write a report, you would have to include

11 information that points to a suspect's guilt, as well as

12 their innocence?

13 A. I don't think it was in training, you know. I

14 wouldn't see the -- the harm in doing it, but I don't

15 know that it was in training.

16 Q. At the very least, everything that's in your

17 report should be accurate; is that fair?

18 A. Hopefully, yes.

19 Q. And in an investigation, you're going to want

20 to document -- let me ask this: If a witness

21 contradicts him or herself, is -- on -- you know, on

22 something that's relevant to the investigation, is that

23 something you would want to write down?

24 A. Potentially.

25 Q. Is there any reason you wouldn't want to write

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1 down a contradiction that was relevant to an

2 investigation?

3 A. None that I can think of.

4 Q. Okay. And is it important to document the time

5 you start talking to a witness?

6 A. Yes.

7 Q. And the location?

8 A. Usually, yeah.

9 Q. And enough identifying information to follow up

10 later if you need to?

11 A. Yes.

12 Q. And are you trained -- and -- and for anything

13 in an investigation, is it important to write down the

14 time that you took the investigative action?

15 A. It -- it could be important, yes.

16 Q. If you find yourself testifying in court, you

17 want to have a record of what you did and when you did

18 it, right?

19 A. Yes.

20 Q. You then rely on the time and location

21 information later. It would be important to write it

22 down; is that fair?

23 A. Yes.

24 Q. How -- in 1993, how were investigative files

25 kept in crimes against persons?

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1 A. So a case agent would generally get copies of

2 everything and then keep it in a -- in a folder and

3 organize it in a binder.

4 Q. Okay. And in terms of copies, are the

5 originals typed up by the involved officers?

6 A. Yeah. You mean like the number one, the

7 initial police report, and all that, are they typed up

8 by the officers?

9 Q. Yes.

10 A. Yes.

11 Q. And what happens to the originals?

12 A. They -- they're -- and I'm not sure if it was

13 true in this case or not, but typically they were

14 multipart forms, and so they would send a couple of

15 forms in different directions, for the records section,

16 and then they would keep -- usually, I remember it was

17 the pink copy, I think, is what they would keep, what

18 they used to call "the pink copy," you know. And that's

19 the one they would keep in their investigative file.

20 Q. If -- in your investigations, if you had a

21 physical document that you showed to a witness when

22 speaking to them, is that something you would note in

23 your report?

24 A. You might or you might not. I don't know.

25 Q. Yeah.

<p style="text-align: right;">Page 62</p> <p>1 Are there situations you wouldn't want to</p> <p>2 share information about what you had shown a witness?</p> <p>3 A. Not necessarily, no.</p> <p>4 Q. And when you're interviewing the witness, it's</p> <p>5 important to take down -- is it important to take down</p> <p>6 their name and date of birth?</p> <p>7 A. I think, generally speaking, that I did do</p> <p>8 that. We identified the folks that we talked to, yeah.</p> <p>9 That's true.</p> <p>10 Q. Okay. And that's part of keeping a clear</p> <p>11 record of who all you talk to; is that right?</p> <p>12 A. Yeah.</p> <p>13 Q. So during an investigation, there are often</p> <p>14 leads that don't pan out, right?</p> <p>15 A. Yes.</p> <p>16 Q. And you may be clo- -- you may be ruling out</p> <p>17 various leads as an investigation proceeds; is that</p> <p>18 right?</p> <p>19 A. Yes.</p> <p>20 Q. And at the start of an investigation, you don't</p> <p>21 always know what's going to be important later on,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And a closed lead may actually be reopened</p> <p>25 later if more evidence emerges, right?</p>	<p style="text-align: right;">Page 64</p> <p>1 detectives are the ones who would record what's written</p> <p>2 during the actual investigation, right?</p> <p>3 A. Yes.</p> <p>4 Q. And so you understand that -- you understood</p> <p>5 that you and the other -- other detectives --</p> <p>6 THE WITNESS: His photo froze.</p> <p>7 MR. JIM DARNELL: We lost you, Wally.</p> <p>8 MR. HILKE: Can you hear me now? Give me</p> <p>9 one second.</p> <p>10 Q. (BY MR. HILKE) Can you hear me now?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Thank you.</p> <p>13 As a detective, you understood that in</p> <p>14 order for criminal defendants to receive evidence that</p> <p>15 pointed to their guilt and innocence, that had to be</p> <p>16 recorded by you and other detectives during your</p> <p>17 investigations; is that fair?</p> <p>18 A. As a detective, I recorded information, gave it</p> <p>19 to the DA and -- you know, I'm not sure what you're</p> <p>20 asking me, but that's what I did. I got information. I</p> <p>21 recorded it. I turned it over to the DA.</p> <p>22 Q. Right. And you would have been -- was it your</p> <p>23 practice to be careful to make sure that if you had</p> <p>24 evidence that pointed to a suspect's innocence, that</p> <p>25 that would get written down and shared with the DA?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yeah.</p> <p>2 Q. And so you try to document good information on</p> <p>3 the leads you -- you consider during an investigation,</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. And you want to be able to remember the</p> <p>7 specific details of what you were told, right?</p> <p>8 A. Yes.</p> <p>9 Q. And you also need those identifiers so you can</p> <p>10 locate them again if you need to, right?</p> <p>11 A. Yeah.</p> <p>12 Q. Do you agree that any information that points</p> <p>13 to the guilt or innocence of a potential suspect should</p> <p>14 be written down?</p> <p>15 A. That would be preferred, yes.</p> <p>16 Q. You agree that it should be done.</p> <p>17 A. Sure.</p> <p>18 Q. And as a detective, was it your understanding</p> <p>19 that criminal defendants have a right to evidence that</p> <p>20 may point to their innocence?</p> <p>21 A. Yes. And I know that that's probably done</p> <p>22 through the DA's office, you know. I know we didn't</p> <p>23 give information to anybody other than the DA.</p> <p>24 Q. Right.</p> <p>25 But you're the one who -- you and other</p>	<p style="text-align: right;">Page 65</p> <p>1 A. As careful as possible.</p> <p>2 Q. And was it your understanding that evidence of</p> <p>3 alternative suspects would tend to point to the</p> <p>4 innocence or guilt of the person ultimately charged?</p> <p>5 A. It could, yeah.</p> <p>6 Q. If -- if there was some evidence pointing to</p> <p>7 another suspect, that would tend to suggest an</p> <p>8 alternative suspect's innocence; is that right?</p> <p>9 MR. JIM DARNELL: Object, based on I don't</p> <p>10 under- -- say that again. I don't under- -- understand</p> <p>11 it.</p> <p>12 MR. HILKE: Yes.</p> <p>13 Q. (BY MR. HILKE) Your -- if a person is charged</p> <p>14 with a crime where there is evidence pointing to a</p> <p>15 second person being the real perpetrator, that tends to</p> <p>16 suggest that the person charged -- that points at least</p> <p>17 a little towards their innocence, right?</p> <p>18 A. Can you -- can you restate that a little</p> <p>19 clearer? Because I'm not -- I'm not sure what you're</p> <p>20 asking me.</p> <p>21 Q. I can try.</p> <p>22 You said that if you've got evidence that</p> <p>23 points to a suspect's innocence, you would try to record</p> <p>24 that, right?</p> <p>25 A. Yes.</p>

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1 Q. That could include evidence pointing to
2 alternative suspects, right?

3 A. Yes.

4 Q. I think you mentioned that as a detective you
5 received training in both interrogations and interviews.
6 Is that right?

7 A. Yes.

8 Q. And when -- do witnesses always tell the truth
9 when you talk to them?

10 A. The witnesses?

11 Q. Yes, sir.

12 A. Witnesses do not always, no.

13 Q. Is it -- is it fairly common for witnesses to
14 either not tell the truth or give misinformation?

15 A. Yes.

16 Q. And what do you do to try to find out if a
17 witness is telling you the truth or not?

18 A. Ask the same question multiple times and at
19 different points or look for inconsistencies or, you
20 know, some -- sometimes I think people could tell you
21 things, and you suspect they're untrue, and there's not
22 much you can do about it because you don't have anything
23 to contradict it.

24 Q. Yeah.

25 In that process, is it important to avoid

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1 leading the witness into saying what -- into telling you
2 just what you want to hear?

3 A. Generally speaking, yes.

4 Q. Yeah. What do you do to avoid leading
5 witnesses when you interview them?

6 A. You ask them open-ended questions.

7 Q. And if a witness tells you that one of your
8 suspects wasn't involved in a crime, would you seek
9 corroborating information to test that?

10 A. Potentially, sure.

11 Q. Would you ask the witness how they know that
12 someone wasn't involved?

13 A. Would I ask that?

14 Q. Yes.

15 A. Sure.

16 Q. And if you found inconsistencies, would you
17 challenge their testimony?

18 A. If somebody was being inconsistent, would I
19 question that?

20 Q. Yeah.

21 A. Yes.

22 Q. And when you discover an inconsistency in your
23 investigation, that's often a sign that you should probe
24 a little bit deeper; is that fair?

25 A. Sure.

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1 Q. The El Paso Police Department also had policies
2 on taking confessions from adults; is that right?

3 A. Yes.

4 Q. Do you remember what those detect- -- those
5 policies were when you were a detective in 1993?

6 A. Not off the top of my head, I don't.

7 Q. Sure.

8 Let me share a second document with you.
9 We'll mark this Exhibit Number 2. This is at
10 City 21488, for the record.

11 (Exhibit 02 marked.)

12 Q. And do you see here where it says, Section
13 6.03, "Confessions, Admissions, and Statements"?

14 A. Yes.

15 Q. Okay. I'm going to scroll you all the way down
16 to number -- well, to just number 1. Read the
17 following: "The procedures for obtaining a written
18 confession are as follows: 1. When the officer becomes
19 aware of a subject willing to give a voluntary written
20 confession, the officer will take the subject before a
21 magistrate for a formal warning. After the warning is
22 given to the subject by the magistrate, the subject will
23 sign his name, will note the correct time, and will date
24 the magistrate's warning form."

25 And continuing down, there are some

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1 options. "If, however, a magistrate is not readily
2 available and every reasonable effort to locate a
3 magistrate has been exhausted by the officer, the
4 following may be used," and then there's Sections a.,
5 "Miranda Warning Card." There's a lot of -- and "B.
6 Warning Procedures."

7 Did you read those sections of that report?

8 A. Can you say that again?

9 Q. Right.

10 Did you read those sections of the report
11 that I just read out loud to you?

12 A. Yes.

13 Q. Okay. And was that your practice in 1993, to
14 take -- exhaust all reasonable efforts to take adults
15 before a magistrate before taking their confession?

16 A. No.

17 Q. And what was your practice as of 1993?

18 A. The practice in 1993 and the whole time I was
19 there was to use a district attorney warning card,
20 read -- you know, administer that to the suspect and
21 then have them sign and date it and time it.

22 Q. And were you ever told to use anything other
23 than a Miranda card with adult suspects before taking
24 their confessions?

25 A. I mean, a confession form, there was -- there

<p style="text-align: right;">Page 70</p> <p>1 was also the rights laid out upon it.</p> <p>2 Q. Were you ever told that instead of reading an</p> <p>3 adult suspect their rights, you should take them to a</p> <p>4 magistrate instead?</p> <p>5 A. No.</p> <p>6 Q. Was it your practice to have witnesses to adult</p> <p>7 confessions?</p> <p>8 A. Yes, it was our practice when they were</p> <p>9 available and, of course, you -- you tried to find them,</p> <p>10 if you could.</p> <p>11 Q. And if you were unable to find witnesses, was</p> <p>12 it appropriate to take an adult confession without</p> <p>13 witnesses?</p> <p>14 A. I would generally try to get a witness, but</p> <p>15 if -- if you absolutely couldn't get a witness, then</p> <p>16 it -- then it could cause that issue.</p> <p>17 Q. Right.</p> <p>18 Did you ever have to take an adult</p> <p>19 confession without witnesses?</p> <p>20 A. I don't -- I don't remember. I'd have to go</p> <p>21 back and look at items like that and see.</p> <p>22 Q. Do you have a memory of anyone ever getting in</p> <p>23 trouble for signing a confession without witnesses?</p> <p>24 A. No.</p> <p>25 Q. I'm going to stop sharing this now.</p>	<p style="text-align: right;">Page 72</p> <p>1 Understood.</p> <p>2 But is it -- would you agree that in</p> <p>3 general, you'd like to hold back that nonpublic</p> <p>4 information so you can use it to test what the witnesses</p> <p>5 are telling you?</p> <p>6 A. It -- it can be helpful.</p> <p>7 Q. And if you disclose that nonpublic information</p> <p>8 first, now you don't know, if they say that same thing</p> <p>9 back to you, where they got that information from; is</p> <p>10 that fair?</p> <p>11 A. Can you clarify that question? I'm not</p> <p>12 entirely sure what you're asking me.</p> <p>13 Q. Yeah.</p> <p>14 Once you've disclosed nonpublic information</p> <p>15 to a witness, you can't keep that nonpublic information</p> <p>16 to test what that witness is telling you anymore; is</p> <p>17 that fair?</p> <p>18 A. So just to make it clear, are you saying if I</p> <p>19 tell somebody something and then they tell it right back</p> <p>20 to me? Is that what you're saying?</p> <p>21 Q. That's what I'm -- that's what I'm saying.</p> <p>22 A. Okay. I apologize for that. Sometimes I do</p> <p>23 better with simple.</p> <p>24 You know, yeah, I would think you would</p> <p>25 have to keep it in mind that you just told him that.</p>
<p style="text-align: right;">Page 71</p> <p>1 So we talked earlier. Sometimes witnesses</p> <p>2 provide inaccurate information to the police, right?</p> <p>3 A. Yes.</p> <p>4 Q. And that could be intentional or just a</p> <p>5 mistake, right?</p> <p>6 A. Yes.</p> <p>7 Q. And part of your job as a -- as a detective is</p> <p>8 to try to figure out how reliable the information you're</p> <p>9 getting is; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And you'd also like to know if someone's</p> <p>12 intentionally trying to deceive you; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And one way to check if information about a</p> <p>15 crime is reliable is to see if the person you're talking</p> <p>16 to knows nonpublic facts about a crime, right?</p> <p>17 A. True.</p> <p>18 Q. And so to test the reliability of what you're</p> <p>19 being told, was it your practice to avoid disclosing</p> <p>20 nonpublic information about crimes to witnesses?</p> <p>21 A. I think, generally, that's a true statement.</p> <p>22 You would try not to -- to do that. Sometimes you</p> <p>23 would. Sometimes you would inadvertently do it, or</p> <p>24 you would -- you know, maybe even without a choice.</p> <p>25 Q. Okay. Right. It's -- it's not -- right.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. And is it correct that sometimes suspects</p> <p>2 falsely confess to the police?</p> <p>3 A. I -- I think that it's happened for sure.</p> <p>4 Q. And you would -- is it right -- is it correct</p> <p>5 that when someone confesses to you, you want to assess</p> <p>6 how reliable their confession is?</p> <p>7 A. Yes.</p> <p>8 Q. And so in the same way, you would try to</p> <p>9 withhold nonpublic facts from a suspect to see if they</p> <p>10 can provide them; is that right?</p> <p>11 A. Yeah. That would be a good practice, yeah.</p> <p>12 Q. And if the confession is going to be reliable,</p> <p>13 it's critically important that the suspect independently</p> <p>14 produces the information that's being shared with you,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And so for that reason, if you provide</p> <p>18 nonpublic information to a suspect who confesses, you</p> <p>19 want to document that you disclosed that information,</p> <p>20 right?</p> <p>21 A. You would probably want to do it. I don't know</p> <p>22 that it would always happen, but you would probably want</p> <p>23 to try to do that.</p> <p>24 Q. And -- and the reason you'd want to do that is</p> <p>25 so you've got a record of how you know that the</p>

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1 confession was reliable, right?

2 A. Sure.

3 Q. And during an interrogation, it's important to

4 avoid leading questions, right?

5 A. For the most part, yeah.

6 Q. And a confession is more convincing if the

7 suspect provided the information on their own and wasn't

8 led, right?

9 A. Can you say that again?

10 Q. Yeah.

11 A confession is more -- a confession is

12 more reliable if the suspect provides the information on

13 their own instead of being led, right?

14 A. Yes.

15 Q. And if you lead too much, it's harder to verify

16 what was told to you because you don't know if they --

17 well, strike that.

18 A confession should be in the suspect's own

19 words, right?

20 A. Paraphrased. I mean, you try to get as close

21 to what they're saying, but the reality of it is that

22 you end up paraphrasing.

23 Q. And an oral confession should be reduced to

24 writing and signed as soon as possible, right?

25 A. Yes.

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1 Q. And when you take a confession, it's a

2 combination of question and answer and narrative from

3 the suspect; is that right?

4 A. Yes.

5 Q. And is it your practice that a -- when you type

6 up a confession, it should contain areas that the

7 suspect can correct before signing?

8 A. No. You mean like intentional errors?

9 Q. Yes, sir.

10 A. Well, no. I -- I don't think that's -- was

11 procedure at all.

12 Q. That wasn't something you were trained to do?

13 A. No.

14 Q. And it wasn't part of your practice?

15 A. Well, if -- if an error was made, then yeah.

16 And -- and we're going over the confession before

17 signature, we see an error, then, yeah, we change it

18 right there.

19 Q. As a detective, was it your practice to be

20 extra careful with juvenile suspects?

21 A. I was always more apprehensive with them, if

22 that makes any sense.

23 Q. Yeah. What do you mean by "apprehensive"?

24 A. Because there's a lot of rules surrounding

25 juveniles, so, you know, the concern's always you don't

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1 want to violate the -- the rules.

2 Q. That makes sense.

3 Did you also have the concern that

4 juveniles might be more easily pressured into giving a

5 false statement?

6 A. You know, I don't think that I thought about

7 that a lot back in -- in that time period. I -- I don't

8 think that's something that I just thought about a lot.

9 I didn't read a lot of material on it or anything like

10 that.

11 Q. Okay. Was that a specific part of your

12 training, the vulnerability of juveniles in crime

13 investigation?

14 A. Not really, no.

15 Q. Did -- was it your understanding that

16 juveniles' parents had to be involved when they were

17 investigated?

18 A. Yes.

19 Q. What -- how did their parents have to be

20 involved?

21 A. Well, typically, we'd let them know when we

22 were going to talk to them. We'd say, hey, we want to

23 talk to your child about A, B, or C, whatever it --

24 whatever the issue was.

25 Q. Other than notifying the parents, was there

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1 anything else you had to do with -- relative to the

2 parents?

3 A. I can't think of anything offhand.

4 Q. If the -- if -- if you wanted to talk to a

5 juvenile and the parents were -- were not present, did

6 you have to go and find the parents?

7 A. We made effort, or sometimes when it was at a

8 school, you know, you could ask the principal if you

9 could talk to them and that -- that's one I can think

10 of.

11 Q. So there were special officers in the police

12 department specialized in dealing with youth when you

13 were a detective; is that right?

14 A. Yes.

15 Q. And those officers had to be involved if you

16 wanted to interrogate a juvenile suspect; is that right?

17 A. Generally speaking, I believe that that

18 happened most of the time, but I -- I'm not sure if it

19 was every time. I can't -- I can't consent to that.

20 Q. Were they typically involved when interviewing

21 a juvenile witness who you did not believe to be a

22 suspect?

23 A. No.

24 Q. And was it your practice to make sure that a --

25 well, strike that.

<p style="text-align: right;">Page 78</p> <p>1 In crimes against persons, when you were</p> <p>2 there, how were your investigations supervised?</p> <p>3 A. How were they supervised?</p> <p>4 Q. Yes, sir.</p> <p>5 A. Well, do you mean by the supervisor?</p> <p>6 Q. Yes, sir. What role did your -- well, let me</p> <p>7 start with this: Were there -- in 1993, were the</p> <p>8 detectives in crimes against persons supervised by</p> <p>9 sergeants?</p> <p>10 A. Yes.</p> <p>11 Q. How many sergeants were there?</p> <p>12 A. There were two -- sorry. There were three.</p> <p>13 Q. And what role did the sergeants play in</p> <p>14 supervising investigations?</p> <p>15 A. They would call you out to it. They would</p> <p>16 usually come out to the scenes, and then they -- they</p> <p>17 were advised on a daily and also multiple times,</p> <p>18 sometimes, throughout a day what was going on in the</p> <p>19 case and -- and, again, we're not talking about every</p> <p>20 single kind of case, you know. I would say, generally,</p> <p>21 that's true for the murders. I don't think it was</p> <p>22 necessarily true for all the other stuff, though.</p> <p>23 Q. And what else -- so these sergeants would</p> <p>24 consult with you and other detectives on a -- on a</p> <p>25 regular basis about your investigations, especially in</p>	<p style="text-align: right;">Page 80</p> <p>1 investigation that the sergeant reviews your case file.</p> <p>2 A. They could. And, I mean, that could happen,</p> <p>3 especially if you're talking about a murder case. I</p> <p>4 think that could happen. On most of the other stuff,</p> <p>5 no.</p> <p>6 Q. And in your practice, did that happen, that</p> <p>7 your sergeants would sometimes ask you, "Hey, can I see</p> <p>8 the case file?"</p> <p>9 A. Occasionally.</p> <p>10 Q. Occasionally?</p> <p>11 Aside -- and was there other supe- -- well,</p> <p>12 strike that.</p> <p>13 So by 1993, you had been named in multiple</p> <p>14 internal affairs investigations; is that right?</p> <p>15 A. Probably, yes.</p> <p>16 Q. And in -- had you been required to give</p> <p>17 statements in internal investigation -- internal affairs</p> <p>18 investigations?</p> <p>19 A. Yes.</p> <p>20 Q. And were there officers -- was there a specific</p> <p>21 unit at the department that handled internal affairs</p> <p>22 investigations?</p> <p>23 A. Yes.</p> <p>24 Q. And when you gave statements, were they</p> <p>25 tape-recorded or typed up?</p>
<p style="text-align: right;">Page 79</p> <p>1 homicides; is that fair?</p> <p>2 A. I would say primarily with homicides. All</p> <p>3 the -- all the other cases -- the types of case we</p> <p>4 worked, I don't think that that would necessarily be the</p> <p>5 truth at all.</p> <p>6 Q. What kind of supervision was given to</p> <p>7 nonhomicide cases by the sergeants?</p> <p>8 A. If I had a question or I needed more direction</p> <p>9 on something, I would consult with them. Or when the</p> <p>10 case was closed out, it ultimately would go to them, and</p> <p>11 then they -- their role was to review it and then route</p> <p>12 it correctly.</p> <p>13 Q. Anything else?</p> <p>14 A. Not off the top of my head.</p> <p>15 Q. Yeah. All right.</p> <p>16 And during the course of your</p> <p>17 investigations, before closing them out, would sergeants</p> <p>18 review your case files?</p> <p>19 A. On the -- the -- the case itself was the case</p> <p>20 file, so we would actually give it to -- to them, so</p> <p>21 they'd have the case file.</p> <p>22 Q. Right. So the -- the sergeant reviews the case</p> <p>23 file when the investigation is over; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. It's not like during the middle of an</p>	<p style="text-align: right;">Page 81</p> <p>1 A. I always typed up statements.</p> <p>2 Q. And when they were typed up, who actually typed</p> <p>3 them up? You or the internal affairs officer?</p> <p>4 A. I saw it both ways, but primarily they would</p> <p>5 want us to do it.</p> <p>6 Q. Okay. And then are you given specific</p> <p>7 questions to answer in your statement?</p> <p>8 A. Yes.</p> <p>9 Q. And before you go in to type up your</p> <p>10 statement -- or before you go in for your statement to</p> <p>11 be typed, are you told in advance what those questions</p> <p>12 are going to be?</p> <p>13 A. Generally, they would interview you first and</p> <p>14 then go over the questions and -- and it seems like they</p> <p>15 would give you the questions. I think -- I think on at</p> <p>16 least several occasions, I would answer those specific</p> <p>17 questions, whatever they had written down.</p> <p>18 Q. After you -- after the statement was typed, in</p> <p>19 the situations where you typed your statement, what</p> <p>20 happened after you finished typing your statement?</p> <p>21 A. I'd sign it and that -- that was it.</p> <p>22 Q. Okay. And internal affairs has the ability to</p> <p>23 issue -- or strike that.</p> <p>24 In your career, have you received gag</p> <p>25 orders from internal affairs telling you not to talk</p>

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1 about an incident?

2 A. I -- I don't know if I received like a formal
3 gag order, but I certainly was given directives, don't
4 talk about this or don't talk about that thing about it,
5 yeah.

6 Q. Okay. And in the absence of such a directive,
7 is it appropriate to talk with other officers about an
8 internal affairs complaint that you've both been named
9 in?

10 A. If it hasn't been ordered, I guess you could,
11 but I -- I know that I probably wouldn't have done that.

12 Q. How did you receive notice of internal affairs
13 investigations you were named in?

14 A. Usually, just I was told to go to internal
15 affairs. That was basically it. As far as I can
16 remember, it seems like that's how it happened.

17 Q. So was it fairly instantaneous? You were told
18 to go, and then you're in the office being interviewed?

19 A. Yes. They very often would just call -- get on
20 the radio and tell you to go to the internal affairs.

21 Q. Sure.

22 Do you -- do you remember ever knowing a
23 complaint had been made against you before you were
24 called in to come give a statement?

25 A. Like a complaint being made before? Can -- can

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1 you repeat that? Because I'm not sure I understand what
2 you're saying.

3 Q. Yeah, of course.

4 Can you remember ever being aware of --
5 that you were named in an internal affairs investigation
6 where it wasn't instantaneous, where you didn't just go
7 right in?

8 A. I -- I think probably so. I can't remember
9 specific cases, but probably where -- probably, yeah.

10 Q. And how else could you have learned that you
11 were named in an internal affairs investigation?

12 A. The supervisor could have said something about
13 it or like, hey, you know, there's going to be an
14 internal affairs complaint on that or on this, or
15 whatever the issue is, and just learn about it, and
16 that's it. And then just wait to be called.

17 Q. Sure.

18 Did you receive any training -- well,
19 strike that.

20 As a detective, you've taken many, many
21 statements from witnesses in your investigations; is
22 that right?

23 A. Yes.

24 Q. And when you take a statement, was it your
25 practice to try to get -- get specifics about what a

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1 witness was telling you?

2 A. What did you just say? "To edit specifics"?

3 Q. No. I'm sorry. To get specifics about --

4 A. Oh.

5 Q. -- what a witness was telling you.

6 A. Yes. Like you -- you try to learn the
7 information that they might have to add to it and then
8 record it.

9 Q. And your practice was you wanted enough
10 specific details that you could corroborate other --
11 other statements with the information you got; is that
12 fair?

13 A. I think the goal was to get whatever you could
14 get and any helpful information whatsoever. Just any.

15 Q. Right.

16 And is that because the more details you
17 get, the more you can corroborate or the more that that
18 account can be corroborated or may be disproven if
19 someone says something different?

20 A. Yeah. I think it would work that way, yeah.

21 Q. Yeah.

22 And when you take a statement, if you've
23 got a suspect in mind, you want to learn everything that
24 points to their guilt and everything that points to
25 their innocence; is that right?

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1 A. Yes.

2 Q. Have -- have you ever used physical force
3 against a suspect in a police station?

4 A. In a police station?

5 Q. Yes, sir.

6 A. And when you say "suspect," they have to be
7 charged with a crime? I mean --

8 Q. Well --

9 A. -- I can think of instances where we used
10 physical force in the station and we were not conducting
11 an investigation. We just had people come in off the
12 street.

13 Q. Yeah. And someone -- right. So I'm asking
14 about someone who was charged with or suspected of a
15 crime.

16 A. Yes.

17 Q. When have you -- when have you done so?

18 A. Well, the -- the one case that -- that I
19 remember very, very well was -- we were working on a
20 child abuse case that the child got -- was kicked in the
21 stomach by a boyfriend of the -- of the mother of the
22 child, and his liver was split and he -- he was up at
23 the hospital, and he ended up dying. He bled out
24 inside.

25 And so we called -- I was not in crimes

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1 against persons then. We called crimes against persons
2 because we learned that the -- the child had died and
3 they -- they sent a detec- -- they sent a couple of
4 detectives, and they started talking to the guy, and
5 they unhandcuffed the guy, I think, and -- and he wasn't
6 yet under arrest, and they were taking a statement from
7 him.

8 And the -- the suspect grabbed an item off
9 of the desk and attacked the detective with it and then
10 managed to get ahold of a pair of scissors and shoved it
11 into his throat. And we -- me and another guy that were
12 there, we heard that initially start and intervened in
13 it and -- and, I mean, it was a mess, yeah. So we --
14 did we use violence? Yes.

15 Q. Can you recall any other instances where you
16 used force against a suspect in a police station?

17 A. There was a guy who ran up into the northeast
18 station. He was really -- I mean, he -- he must have
19 had probably a toxic level of cocaine ingestion, and he
20 was completely naked. He had started ripping his own
21 scrotum off. He was covered in blood, and he attacked
22 the desk officer and, yeah, we -- we intervened in that
23 as well.

24 Q. Have you ever -- are you aware of any instance
25 where an officer was disciplined for using force against

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1 a suspect in a police station?

2 A. Yes.

3 Q. And what -- what instance are you -- and is
4 this an instance -- what -- how many instances are you
5 aware of?

6 A. Well, I'm aware of one that I can think of, and
7 I initiated the internal investigation against him. And
8 I'm not -- I don't think it happened in the station, but
9 I think it happened in the patrol car just outside the
10 station.

11 Q. And before you -- in what year was that from?

12 A. Gosh, I -- it was when I was a sergeant and
13 so -- so it was probably around maybe '96, '97,
14 somewhere around there.

15 Q. Sure.

16 To your recollection, from the time you
17 joined the department to the time you left crimes
18 against persons, were you aware of any incidents where
19 officers were disciplined for using force against a
20 suspect in a police station?

21 A. Not -- not that come to mind. I -- I can't
22 think of like a lot of them or anything, no.

23 Q. And have you ever -- have you ever testified
24 falsely under oath?

25 A. No.

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1 Q. Have you ever seen another officer testify
2 falsely under oath?

3 A. No.

4 Q. And have you ever heard of an officer being
5 disciplined for testifying falsely under oath?

6 A. I can't remember anything.

7 Q. And if you witness misconduct by another police
8 officer, is it true that you have a duty to report that
9 misc- -- misconduct to internal affairs?

10 A. Or to your supervisor. I -- reporting it to
11 the supervisor has the effect of reporting it to
12 internal affairs.

13 Q. Have you ever reported another officer -- or --
14 yeah. Have you ever reported another officer for
15 misconduct?

16 A. Yes.

17 Q. How many times?

18 A. I don't know, but it -- it's for different
19 things, for a number of reasons, yes. When I was a
20 supervisor and in command, I -- I did.

21 Q. And did you ever do it before you became a
22 supervisor?

23 A. Yes.

24 Q. When did you do it before becoming a
25 supervisor?

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1 A. There -- I can't remember the details exactly,
2 but I had arrested somebody, and they had made an
3 allegation that somebody at the station -- an officer at
4 the station was involved in narcotic activity.

5 Q. Uh-huh.

6 A. And I reported that.

7 Q. And was your report based only on the
8 information you had been given by the arrestee?

9 A. Yes, because they didn't want me involved after
10 that. I gave them everything that I knew and they -- I
11 never heard anything about that again until he was
12 terminated.

13 MR. HILKE: I think it would be a good time
14 for a short break.

15 MR. JIM DARNELL: I agree.

16 THE VIDEO TECHNICIAN: Okay. Give me just
17 one moment. We are now off the record, and the time is
18 12:15.

19 (Break taken from 11:15 a.m. to 11:29 a.m.)

20 THE VIDEO TECHNICIAN: We are back on the
21 record for the deposition of Scott Graves being
22 conducted by videoconference. My name is Jessica Chase.
23 Today is July 28th, 2022, and the time is 12:29 p.m.

24 Counsel, you may proceed.

25 MR. HILKE: Thank you.

<p style="text-align: right;">Page 90</p> <p>1 Q. (BY MR. HILKE) Sir, when you were at CAP in</p> <p>2 1993, did all the CAP detectives share an office?</p> <p>3 A. We had a common work area with cubicles in it.</p> <p>4 Q. Do you remember -- do you remember where your</p> <p>5 cubicle was relative to Al Marquez's cubicle?</p> <p>6 A. It was at an angle and I -- I could see him.</p> <p>7 He was probably about 15 feet away from where I sat.</p> <p>8 Q. Got it. You could see him from where you sat?</p> <p>9 A. If I leaned my head out, I could see him.</p> <p>10 Q. And do you remember where Earl Arbogast's</p> <p>11 cubicle was relative to yours?</p> <p>12 A. I believe he was on the -- the other side. And</p> <p>13 there's walkways that would go down through the middle,</p> <p>14 and I think he was over in the other walkway, as I</p> <p>15 remember it. I could be wrong, but I think that's where</p> <p>16 he was.</p> <p>17 Q. And by 1993, had you worked together with Earl</p> <p>18 Arbogast on multiple occasions?</p> <p>19 A. Yes.</p> <p>20 Q. More than a few times?</p> <p>21 A. Yes.</p> <p>22 Q. And did you -- did you have a high opinion of</p> <p>23 him as an officer?</p> <p>24 A. I -- I liked him, yes.</p> <p>25 Q. And was -- was Earl a good communicator?</p>	<p style="text-align: right;">Page 92</p> <p>1 him on that.</p> <p>2 Q. Yeah.</p> <p>3 Did you have an impression of Al Marquez's</p> <p>4 style as an investigator?</p> <p>5 A. You know, I -- I tried not to pay too much</p> <p>6 attention to Al, and I tried not to cross paths with him</p> <p>7 because we personally did not get along.</p> <p>8 Q. Right.</p> <p>9 On the Electric Street murders, do you</p> <p>10 recall any -- having any difficulty exchanging</p> <p>11 information about the case with Al Marquez?</p> <p>12 A. I don't think so, no.</p> <p>13 Q. Yeah.</p> <p>14 A. And -- and when we needed to communicate, we --</p> <p>15 we did so professionally with each other, and that was</p> <p>16 that.</p> <p>17 Q. I understand.</p> <p>18 Did you have any opinion of Al Marquez's</p> <p>19 quality as a detective?</p> <p>20 A. No. I -- like I said, I didn't pay much</p> <p>21 attention to the -- the work that he did. I paid more</p> <p>22 attention to what I was doing.</p> <p>23 Q. Okay. Do you recall earlier in your career at</p> <p>24 CAP being told you needed to improve in interrogation?</p> <p>25 A. Oh, I was probably told I needed to improve in</p>
<p style="text-align: right;">Page 91</p> <p>1 A. It could be challenging because of his hearing.</p> <p>2 Q. Uh-huh.</p> <p>3 A. So that was the -- the thing. And I don't -- I</p> <p>4 don't want to say what happened to his hearing, but he</p> <p>5 had an issue with his hearing.</p> <p>6 Q. When you worked with him on cases, did you have</p> <p>7 any problems sharing information with each other?</p> <p>8 A. No.</p> <p>9 Q. And did you work with Carlos Ortega on multiple</p> <p>10 occasions?</p> <p>11 A. Not a lot with Mr. Ortega.</p> <p>12 Q. Yeah.</p> <p>13 A. I did one, but I didn't work a lot with him.</p> <p>14 Q. Did you have any opinion on his quality as an</p> <p>15 officer?</p> <p>16 A. He seemed okay to me. Like I said, I thought</p> <p>17 he was a decent -- a decent man.</p> <p>18 Q. Okay. And had you worked with Al Marquez on</p> <p>19 multiple occasions?</p> <p>20 A. I don't think I worked with him much at all.</p> <p>21 Q. You -- you worked with him on the Electric</p> <p>22 Street murders; is that right?</p> <p>23 A. Yes. And not directly with him. I mean, he</p> <p>24 was the -- the case agent, so I wasn't like out in</p> <p>25 the -- the field with him, but, yeah, I was working with</p>	<p style="text-align: right;">Page 93</p> <p>1 a lot of things, I'm sure. They -- they were never</p> <p>2 silent about things like that.</p> <p>3 Q. Uh-huh.</p> <p>4 Do you remember any specific -- do you</p> <p>5 remember how you were told to improve in interrogations?</p> <p>6 A. No.</p> <p>7 Q. I'm going to show you a couple of exhibits.</p> <p>8 All right. So I'll mark this Exhibit 3.</p> <p>9 (Exhibit 03 marked.)</p> <p>10 Q. This is a performance evaluation. Do you see</p> <p>11 right here that this is a performance evaluation report</p> <p>12 supplement?</p> <p>13 A. It looks like it, yes, sir.</p> <p>14 Q. And for the record, this is at City 10265.</p> <p>15 And that it has your name and reporting</p> <p>16 period of July 1, 1992, to December 31, 1992?</p> <p>17 A. Yes.</p> <p>18 Q. And scrolling down to Section E, in</p> <p>19 "Goals/Improvement Programs," it says just one thing:</p> <p>20 "Detective Graves must continue striving to improve his</p> <p>21 interrogation skills." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And at this point in late 1992, you had been in</p> <p>24 CAP for several years, right?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 94</p> <p>1 Q. Do you know why interrogation skills was the</p> <p>2 one thing that was brought up as an area for improvement</p> <p>3 in your performance evaluation?</p> <p>4 A. I don't recall that.</p> <p>5 Q. Okay. I'm going to stop sharing this now, and</p> <p>6 I'm going to share another exhibit.</p> <p>7 MR. JIM DARNELL: Was that Exhibit 3,</p> <p>8 Wally?</p> <p>9 MR. HILKE: That was Exhibit 3. This will</p> <p>10 be Exhibit 4, and I'm going to share it now.</p> <p>11 (Exhibit 04 marked.)</p> <p>12 Q. (BY MR. HILKE) This is at City 10283. Do you</p> <p>13 see here a perf- -- another performance evaluation</p> <p>14 report supplement with your name on it?</p> <p>15 A. Yes.</p> <p>16 Q. And this is with a date of July 1, 1993, to</p> <p>17 December 31, 1993; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And scrolling down to the bottom of Section B,</p> <p>20 job strengths, do you see where it says, "Detective</p> <p>21 Graves has made himself, through study and practice, one</p> <p>22 of the best interrogators in the CAP section"? Do you</p> <p>23 see that -- that part there?</p> <p>24 A. Yes.</p> <p>25 Q. So what happened -- what happened between these</p>	<p style="text-align: right;">Page 96</p> <p>1 A. No.</p> <p>2 Q. Did you know Danny Villegas?</p> <p>3 A. No.</p> <p>4 Q. Did you know Fernando Lujan a/k/a Droopy?</p> <p>5 A. I don't recall any of those.</p> <p>6 Q. Or Enrique Ramirez a/k/a Popeye?</p> <p>7 A. No.</p> <p>8 Q. David Rangel?</p> <p>9 A. Who?</p> <p>10 Q. I guess David Rangel, depending on --</p> <p>11 A. No, I didn't know.</p> <p>12 Q. Okay. And were you familiar with the gang DRC,</p> <p>13 or Duroc Crips?</p> <p>14 A. I don't remember much of the -- they all had</p> <p>15 letters, and there was a bunch of them back in the -- in</p> <p>16 the '90s and I -- there was only a few that I can</p> <p>17 remember. They were like probably the biggest ones.</p> <p>18 Q. What were the biggest ones that you remember?</p> <p>19 A. The Fatherless, the -- a group that they called</p> <p>20 the East Side Crips. Those were two that I can</p> <p>21 remember. And then it was like every little</p> <p>22 neighborhood had their own little thing going on.</p> <p>23 Q. Yeah.</p> <p>24 What -- what was the name of the -- of the</p> <p>25 gang ending in "Crips" that you just said?</p>
<p style="text-align: right;">Page 95</p> <p>1 evaluations that changed you from needing to improve in</p> <p>2 interrogations to one of the best?</p> <p>3 A. I have no idea. I don't remember those</p> <p>4 evaluations, honestly, and, you know, I think I worried</p> <p>5 more about an evaluation if it was going to be negative</p> <p>6 or if I felt it was negative. But I -- I do not</p> <p>7 remember the difference between '92 and '93.</p> <p>8 Q. Yeah. So sitting here today, you can't point</p> <p>9 to anything that you would say, "Yeah, that's an example</p> <p>10 of how I got better at interrogations"?</p> <p>11 A. No, sir.</p> <p>12 Q. Okay. I will stop sharing this now.</p> <p>13 So prior to the Electric Street murders,</p> <p>14 did you know who Rudy Flores was?</p> <p>15 A. Not that I can recall.</p> <p>16 Q. Or his brother, Javier Flores?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Or Rodney Williams?</p> <p>19 A. I don't believe so.</p> <p>20 Q. Were you familiar with the victims of the</p> <p>21 Electric Street shootings, Robert England or Armando</p> <p>22 Lazo?</p> <p>23 A. No.</p> <p>24 Q. Did you know Marcos Gonzalez before the</p> <p>25 shootings?</p>	<p style="text-align: right;">Page 97</p> <p>1 A. East Side Crips.</p> <p>2 Q. Okay. And around that time, does -- does a</p> <p>3 gang with the acronym L, as in "Larry," F, as in</p> <p>4 "Frank," L, as in "Larry," LFL, ring any bells to you?</p> <p>5 A. That's the Fatherless.</p> <p>6 Q. Oh, LFL is the Fatherless?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. Do you know -- do you know what the</p> <p>9 letters stand for?</p> <p>10 A. Honestly, I -- you know, I didn't really --</p> <p>11 I -- I knew about them, and they were a gang with a</p> <p>12 little bit more longevity in -- in the city, so I think</p> <p>13 that's why they stuck in my memory. I don't know. But,</p> <p>14 yeah, I mean, whatever -- they all had different things</p> <p>15 that they called themselves, and some of it was pretty</p> <p>16 nonsensical.</p> <p>17 Q. Did -- what about VNE, Varrio Northeast?</p> <p>18 A. Yes. Yes, that is one.</p> <p>19 Q. And ECH, or Eisenhower Crazy Hoods?</p> <p>20 A. I probably heard of it, but it's -- that wasn't</p> <p>21 one that stuck.</p> <p>22 Q. Okay. Or LML, Los Midnight Locos?</p> <p>23 A. I think vaguely I remember that one, yes.</p> <p>24 Q. And in 1993, was there a gang unit in the</p> <p>25 El Paso Police Department?</p>

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1 A. There -- there is, and there was, but there's
2 different times when they either called it something
3 different or they had differing roles, and so it's
4 evolved a bit. So I would say probably, yes, they --
5 they -- they were still an active gang even back then.

6 Q. Yeah.

7 And these are officers who are outside of
8 crimes against persons; is that right?

9 A. Yes.

10 Q. And their -- their specialized knowledge is
11 knowing about the various gangs in El Paso; is that
12 right?

13 A. Yes, and keeping track of all those letters.

14 Q. And in a cold case like -- like this, would
15 they have been involved in understanding the potential
16 gang dynamics of a homicide?

17 A. It's possible, absolutely. I think they --
18 that's what they did. They tracked, you know, beefs
19 between one gang or another.

20 Q. And they would have known where the different
21 gang territories were, for example; is that true?

22 A. I would suppose, yes.

23 Q. They might be able to help figure out what
24 motives would be if a victim was in a gang in terms of
25 there being conflicts; is that right?

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1 A. Very often that is true, yeah.

2 Q. And in 1993, if you wanted that information,
3 you know, were gangs tracked in a computer system, or
4 did you just have to call up a gang officer and ask
5 them?

6 A. I'm -- I'm thinking they kept stuff in the
7 computer, but computers were just not that developed
8 back then. I mean, they weren't anything like they are
9 now. So mostly, we would just go straight to the -- the
10 people.

11 Q. Okay. As a CAP detective in 1993, you wouldn't
12 expect to boot up your computer and pull up their gang
13 data, would you?

14 A. No.

15 Q. So the -- the site of the Electric Street
16 murders is at the intersection of Transmountain and
17 Electric Street; is that right?

18 A. That's where I understand it was, yeah.

19 Q. Yeah.

20 Do you know what -- what gang territory is
21 around that area?

22 A. I do not know.

23 Q. And would you have expected to have that
24 information back in 1993 as part of the investigation?

25 A. Yeah. You know, the thing is that I knew a lot

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1 more about gang -- you know, generally, the gangs back
2 then. You know, I don't remember a lot of that stuff.

3 Q. Yeah.

4 Well, you had patrolled around that area
5 for four years in the -- in the mid- to late '80s,
6 right?

7 A. Yes.

8 Q. And information about local gangs would have
9 been part of your -- the -- what you learned in your
10 patrol there; fair enough?

11 A. Yeah. And -- and I knew the activities
12 primarily in the place that I worked, which was down in
13 60- -- what they called "61 district." They called it
14 "the lowers." What you're talking about is the portion
15 that they called "the uppers," and the area that --
16 where I used to work was just mostly drugs, heroin,
17 cocaine, crack, that kind of stuff going on down there,
18 and that's what I knew more about --

19 Q. Sure.

20 A. -- back then.

21 Q. What are the boundaries of the lowers?

22 A. So that would have been -- the area where I
23 worked was Monroe Street up to another street called
24 "Fred Wilson," and it's off of Dyer Street, adjacent to
25 Fort Bliss.

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1 Q. Where in El Paso is the northeast substation?

2 A. The old one?

3 Q. The one from 1993.

4 A. Okay. And -- and I don't remember the exact
5 date that they moved it to the -- the -- what they call
6 "the old Sears building," but the substation was on
7 Hondo Pass.

8 Q. Do you remember what the cross street was?

9 A. Probably the closest one that I can think of
10 would be Gateway North and Hondo Pass. It was right
11 behind the National -- the National Guard armory.

12 Q. Okay. And where is the Five Points station?

13 A. Five Points is more towards central El Paso.
14 It's kind of -- it's -- some people consider it part of
15 downtown, but it's not -- it's more central, and it's on
16 the edge of downtown is how I would describe it.

17 Q. Yeah.

18 Is Five Points where the CAP offices were?

19 A. Yes, in another old Sears building.

20 Q. So on the night of the Electric Street murders,
21 you were not called out to the site of the shootings; is
22 that correct?

23 A. No, I was not.

24 Q. And that -- April 21, 1993, was the day that
25 you went to Daniel Villegas's house and picked him and

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1 Marcos Gonzalez up; is that right?
 2 A. That sounds right, yes, sir.
 3 Q. And by April 21, 1993, is it correct that the
 4 investigation had somewhat gone cold?
 5 A. You know, I'm not quite sure how cold it went.
 6 You know, I -- I know that I was kind of transitioning
 7 in and out of the case. And then I don't remember a
 8 slow period at all because I -- the one thing in that
 9 eval that you showed was I did carry the -- the heaviest
 10 caseload in the -- the section, so I was always busy.
 11 Q. Yeah.
 12 You had helped investigate a couple of
 13 leads before you went to Danny Villegas's house, right?
 14 A. I believe I did, yes, sir.
 15 Q. And none of those leads panned out to a viable
 16 suspect, did they?
 17 A. I remember several did not pan out.
 18 Q. And before going to Danny Villegas's house, you
 19 weren't aware of any other viable leads that were active
 20 at that time, were you?
 21 A. Viable means of what?
 22 Q. Viable leads.
 23 A. Oh, leads of -- like just viable leads, is
 24 that --
 25 Q. Yeah. Before -- before you went out to Danny

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1 Villegas's house, were you aware of other potential
 2 suspects that were still viable in the investigation?
 3 A. You know, I'm not sure. I know there was -- I
 4 thought there was probably some -- at least a viable
 5 person somewhere along. They were out and -- and at
 6 that -- I'm -- I'm not sure. I'm -- I'm not sure.
 7 Q. I don't think -- so I want to ask you about
 8 Rodney Williams. You had a chance to review a statement
 9 you took from Rodney Williams in preparation for this
 10 deposition, right?
 11 A. Yes.
 12 Q. And it was Al Marquez who told you to go and
 13 pick Rodney up; is that right?
 14 A. I believe it was, yes.
 15 Q. And do you remember the first thing you did
 16 after you were told to go pick Rodney up?
 17 A. No.
 18 Q. Do you remember what happened when you went out
 19 to look for Rodney?
 20 A. I know we found him.
 21 Q. Do you remember -- do you remember first going
 22 to Rodney's house to try to find him?
 23 A. I don't remember the exact sequence of what led
 24 up to us finding him, but we did find him.
 25 Q. Right.

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1 So beyond that you found him, sitting here
 2 today, you don't remember anything about the search for
 3 Rodney, do you?
 4 A. I think we picked him up at a basketball court,
 5 I want to say.
 6 Q. Okay. And is that something you have an
 7 independent memory of, or are you thinking back to what
 8 you read in the report?
 9 A. I'm thinking back to what I read in my report.
 10 Q. Okay. In terms of an independent memory, do
 11 you have anything at all about looking for and finding
 12 Rodney?
 13 A. Not really clear, no.
 14 Q. Okay. So if Rodney's mother said that you went
 15 to his house and talked to her first, you wouldn't have
 16 any reason to disagree with that, would you?
 17 MR. JIM DARNELL: Object as speculation.
 18 Q. (BY MR. HILKE) Go ahead.
 19 A. It -- it could have happened that way.
 20 Q. Yeah.
 21 Okay. And did anyone go with you to come
 22 pick Rodney up?
 23 A. I believe it was Earl.
 24 Q. Okay. And where did you and Earl bring Rodney
 25 once you found him?

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1 A. To crimes against persons.
 2 Q. Did you stop anywhere before going to the
 3 crimes against persons?
 4 A. I don't believe we did, but I -- I -- I don't
 5 think we did, you know.
 6 Q. And who -- who -- who was the first person to
 7 question Rodney?
 8 A. Probably Earl.
 9 Q. How long did Earl talk to Rodney for?
 10 A. It wasn't long and I -- again, I -- with Earl,
 11 I -- his hearing is just not great, and I didn't have a
 12 lot of confidence in his hearing back then, either. I
 13 mean, he's had that issue for a long time. It wasn't as
 14 bad back then, but it wasn't really good, either.
 15 Q. So was that connected to -- is that why he
 16 didn't talk to Rodney for very long?
 17 A. I think it could be. And I know that on
 18 occasion, I would -- if I would get not real clear
 19 information from Earl, I'd go back and talk to people.
 20 Q. Okay. Were you with Earl when he was talking
 21 to Rodney?
 22 A. I don't believe I was.
 23 Q. Okay. After Earl was done talking to Rodney,
 24 did you go to talk to Rodney?
 25 A. Yes.

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1 Q. And did Earl come back with you when you were
2 talking to Rodney?
3 A. I don't believe he did.
4 Q. Was anyone else sitting with you and Rodney
5 while you were talking to Rodney?
6 A. I don't think so.
7 Q. One of the first things you would have done
8 talking to Rodney would be to take his identifiers,
9 right?
10 A. To ask him his -- his name and stuff. I don't
11 think he had a driver's license.
12 Q. Yeah. To ask him his name and date of birth;
13 is that right?
14 A. Yes.
15 Q. So you would have -- you would have discovered
16 pretty early on that Rodney was 15 years old; is that
17 right?
18 A. Yes.
19 Q. And did Rodney ever ask you for his mom?
20 A. Did he ask for his mom?
21 Q. Yes, sir.
22 A. Not that I recall, no.
23 Q. And is it fair to say that if Rodney's mom had
24 given you permission to talk to Rodney, you would have
25 documented that?

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1 A. I don't know if that's fair to -- to say.
2 Q. Was it necessary to document parental consent
3 when you were interviewing juveniles?
4 A. We usually just asked them for it.
5 Q. Okay. So you'd ask for it verbally?
6 A. Yes.
7 Q. And then you yourself wouldn't write --
8 wouldn't necessarily write down if you'd gotten it or
9 not gotten it?
10 A. No.
11 Q. Okay. Did -- and when you talked to Rodney,
12 were you considering him a witness or a suspect at that
13 time?
14 A. A witness.
15 Q. A witness. Okay.
16 And you didn't ever take -- you didn't ever
17 involve a juvenile officer in talking to Rodney, did
18 you?
19 A. No.
20 Q. And you didn't ever take him to a magistrate,
21 did you?
22 A. No.
23 Q. And Rodney eventually does give you a
24 statement, right?
25 A. Yes.

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1 Q. And Rodney shares a lot of information about
2 the shooting in his statement, right?
3 A. Yes.
4 Q. He puts himself in the -- in the car at the
5 time the victims were shot and killed, right?
6 A. Yes.
7 Q. And Rodney gives the first statement you get
8 from anyone who said they were in the car, right?
9 A. Probably so, yeah.
10 Q. At this time -- around the same time, Al
11 Marquez is talking to -- to David Rangel. Is that -- is
12 that something you knew?
13 A. I don't remember if I knew it or not, but he
14 very well could have been.
15 Q. Yeah. And you don't -- you don't -- okay.
16 And when you're talking to Rodney, you're
17 not operating with a statement from anyone else who says
18 they were in the car, are you?
19 A. What now?
20 Q. You're not -- like you don't have in front of
21 you a statement from another person who says they were
22 also in the car at the time of the shooting, do you?
23 A. No.
24 Q. So at the time you're talking to Rodney, you
25 don't know what whoever else was in the car is going to

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1 say about the shooting, right?
2 A. Right.
3 Q. You don't know if Rodney pulled the trigger and
4 now he's trying to blame someone else in the car, do
5 you?
6 A. I don't believe I did know that.
7 Q. And so -- and you also know that if Rodney had
8 a first level of involvement in the shooting, like if he
9 drove or helped plan it, he could be liable for the
10 killings, too; is that right?
11 A. Potentially, yeah.
12 Q. And so at some point taking his statement, you
13 realized that Rodney may become a suspect in the
14 shooting, right?
15 A. He wasn't indicating that he shot the gun, and
16 he wasn't indicating that he got the gun or that he
17 transferred the gun, or anything like that, so -- and,
18 honestly, he seemed surprised that the shooting
19 happened.
20 Q. So did you feel, taking his statement, that you
21 could conclusively rule him out as a suspect?
22 A. I -- I did not feel like he did the shooting.
23 Q. Okay. But were you confident that no other
24 evidence would implicate him?
25 A. I don't think, you know, I could be a hundred

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1 percent confident, but like I said, I -- I didn't think
 2 he did the -- or planned it.
 3 Q. Yeah.
 4 A. I'll put it that way.
 5 Q. How confident were you that he wouldn't become
 6 a suspect?
 7 A. I think reasonably confident.
 8 Q. Okay. And did you later learn that that
 9 thinking was wrong; that Rodney actually did end up
 10 facing some charges based on his involvement?
 11 A. That he did end up getting charged, that is
 12 true.
 13 Q. So if you had concluded that he might become a
 14 suspect, it would have been necessary to start following
 15 the policies for juvenile suspects, right?
 16 A. It would have changed, yes.
 17 Q. You would have needed to go to a magistrate and
 18 got formal warnings, right?
 19 A. Yes.
 20 Q. And you would also want the -- you would also
 21 need the magistrate to witness him signing the statement
 22 that's to be used to implicate him, right?
 23 A. Yes.
 24 Q. And when you were talking to him, did you see
 25 any downside of giving him that formal process and --

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1 strike that.
 2 When you were talking to him -- I think I'm
 3 good.
 4 At the time you were talking to Rodney, you
 5 weren't aware of anyone else having confessed to the
 6 shootings, right?
 7 A. No.
 8 Q. And so -- and so it wasn't the ca- -- so it
 9 wasn't like you already had enough to convict the
 10 shooters, right?
 11 A. I think that's more of a legal question, when
 12 you talk about convicting them. I'm not really sure
 13 what -- I -- I don't think I was thinking in terms of,
 14 can I convict him?
 15 Q. Yeah.
 16 And when you took Rodney's statement, did
 17 you have anything you were using to corroborate what he
 18 told you?
 19 A. Did -- was I corroborating his statement when I
 20 was taking it?
 21 Q. Yes, sir.
 22 A. And -- I'm -- I -- I'm not sure. I -- I'm not
 23 sure about that.
 24 Q. So Rodney tells you he was in the car during
 25 the shooting, right?

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1 A. Yes.
 2 Q. And he gives various details about how the
 3 shooting unfolded; is that right?
 4 A. Relatively.
 5 Q. And are you evaluating what he tells you
 6 against other information you know about the shooting?
 7 A. I'm listening to him, and I'm trying to get it
 8 into the statement. That's what I'm doing at that time.
 9 Q. Right. So your focus is on making sure
 10 everything he tells you you take down.
 11 A. That the information that he's giving me, I
 12 want it to be in the statement.
 13 Q. And so you're not, for example, looking against
 14 the other police reports to see if it matches, are you?
 15 A. I don't think I had -- I don't think I had
 16 knowledge of every single thing that had happened in
 17 the -- in the case at the given time to be able to do
 18 essentially what I think you're asking me.
 19 Q. Right. Because you weren't -- you weren't the
 20 case agent on this case, right?
 21 A. I was not the case agent in this case.
 22 Q. And so the information about the case isn't --
 23 you don't have it all centralized in the same way the
 24 case agent would, right?
 25 A. No, I don't.

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1 Q. After you finished taking Rodney's statement,
 2 what do you do next?
 3 A. Give it to either -- I likely gave it to either
 4 the sergeant or to Marquez.
 5 Q. Okay. And do you remember discussing the
 6 statement with anyone after you took it?
 7 A. Either Marquez or the sergeant.
 8 Q. Okay. How long did you discuss it?
 9 A. I don't know. But we -- when we were working,
 10 we talked to each other. I mean, we did -- we do that.
 11 That is something that is common.
 12 Q. So what did you do after you were done
 13 discussing the statement you had taken?
 14 A. I don't...
 15 Q. Did you take Rodney home after taking the
 16 statement?
 17 A. At some point in the evening, I -- I did take
 18 him home, yes.
 19 Q. And that would have been before you went out to
 20 Danny Villegas's house; is that right?
 21 A. I believe so, yes.
 22 Q. How long after you took Rodney's statement did
 23 you take Rodney home?
 24 A. It wasn't very long. It was maybe -- maybe an
 25 hour, I guess. I don't -- and I'm not entirely sure

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1 about that. It's been a long time. I don't remember
 2 exactly how long it took, but it wasn't inordinately
 3 long.
 4 Q. If -- if Marquez -- hold on one second, please.
 5 Later that night -- strike that.
 6 Before you went to Danny's house, was a --
 7 an affidavit for an arrest warrant prepared in this
 8 investigation?
 9 A. I don't recall if it was or not.
 10 Q. Right. Do you remember going out to the
 11 magistrate so that an arrest warrant could be given for
 12 Marcos Gonzalez?
 13 A. I'm not sure. I don't remember that, either.
 14 Q. I mean, do you remember waiting at the station,
 15 at the -- do you remember waiting anywhere after
 16 dropping Rodney off and before going out to Danny
 17 Villegas's house?
 18 A. I don't remember it specifically. It could
 19 have happened, but I don't remember.
 20 Q. And did Marquez explain to you why he wanted
 21 Rodney picked up?
 22 A. He had to have told us some information. I
 23 mean, we would have asked, "Why are we picking him up?"
 24 That would have been a question.
 25 Q. Did you learn how Marquez had gotten the

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1 information about Rodney being involved?
 2 A. Not that I can recall, but I might have known
 3 back then. I might have heard why.
 4 Q. And however Rodney's name came up, that should
 5 have been documented in the investigation, right?
 6 A. Can you say that again? You -- you did -- your
 7 feed did that weird thing again.
 8 Q. Yeah.
 9 However Rodney's name came up, that could
 10 have been documented, right?
 11 A. I would think it would have been, yeah.
 12 Q. It would have been important to document how
 13 information about someone in -- in the vehicle used in
 14 the shooting was developed in an investigation, right?
 15 A. I would think so, yeah.
 16 Q. And it would have been inappropriate to omit
 17 that information from police reports; is that fair?
 18 A. Well, it should have probably gone in. If it
 19 didn't, it should have.
 20 Q. Okay. And let me -- I'm going to share with
 21 you another exhibit.
 22 MR. JIM DARNELL: Is this 5?
 23 MR. HILKE: This is 5.
 24 (Exhibit 05 marked.)
 25 Q. (BY MR. HILKE) All right. So we'll mark this

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1 Exhibit Number 5, and this is at Villegas 1- --
 2 J.S. 15779. Do you recognize this as a statement given
 3 to you by Rodney Williams?
 4 A. Yes.
 5 Q. And is this a statement you reviewed in
 6 preparation for your deposition?
 7 A. I believe so, yes.
 8 Q. Okay. I want to call your attention to the
 9 standard trailer at the bottom. This says that you were
 10 the reporting officer on this report; is that right?
 11 A. For that statement, yes.
 12 Q. Okay. And 948, that would be your badge
 13 number?
 14 A. Yes.
 15 Q. And the first date -- there are three dates and
 16 times given in the bottom right; is that correct?
 17 A. And, you know, it's been a long time since I
 18 saw those, but, yeah, those are dates and times for
 19 sure.
 20 Q. Okay. And the date -- the first date,
 21 April 10, 1993; time, 1900- -- 1905 hours, that wasn't
 22 the date you started typing the statement, was it?
 23 A. No.
 24 Q. The next date, "Typed by," April 21, 1993, do
 25 you see a time 1927 hours?

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1 A. Okay. I -- I can't see that because there is
 2 this -- well, let me move the screen.
 3 Okay. Yes, I see it now.
 4 Q. Great.
 5 And below that, it's smudged out a little,
 6 but I'm going to represent to you that it says April 21,
 7 1993, at 2017 hours.
 8 When you were typing reports in 1993, you
 9 would both type them up, and then you would have the
 10 power to actually proof them; is that right?
 11 A. Yes.
 12 Q. And so the time associated with "approving
 13 officer," would that have been the time that you
 14 finished writing and you hit "approve" on that report?
 15 A. That would have probably been the time and --
 16 and the -- these computers were -- because they didn't
 17 run off of -- they -- they ran off of like -- I don't
 18 know where the CPU for this -- or where the actual unit
 19 for the computer was, but this was a terminal that I was
 20 working off of, and I would assume that that time of
 21 approval was when -- well, it was when I approved it,
 22 yeah.
 23 Q. Yeah.
 24 A. To be accurate.
 25 Q. And here, the -- the approval is just -- you

<p style="text-align: right;">Page 118</p> <p>1 know, if you take my representation that this time is</p> <p>2 2017 and the --</p> <p>3 A. Yes.</p> <p>4 Q. -- time above is 1927, that would be 50 minutes</p> <p>5 between the bottom time and the time above it, right?</p> <p>6 A. That -- that sounds right, yeah.</p> <p>7 Q. And -- and that's about how long it might take</p> <p>8 to type and review and approve a statement; is that</p> <p>9 right?</p> <p>10 A. That would be reasonable, yeah.</p> <p>11 Q. And so it wasn't like you had to sleep on it</p> <p>12 and come back the next day and approve it. You could</p> <p>13 just open it up, type it, and approve it, right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And so I'm going to stop sharing this</p> <p>16 document now.</p> <p>17 You also would -- early in your</p> <p>18 investigation, do you recall interviewing a Terri</p> <p>19 Vinson?</p> <p>20 A. Can you say that again?</p> <p>21 Q. Sure. The name is Terri, T-E-R-R-I, Vinson.</p> <p>22 A. Yeah, I remember that name. I -- I don't</p> <p>23 remember --</p> <p>24 Q. Yeah. Oh, go ahead. I'm sorry.</p> <p>25 A. No, I -- I remember the name.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Okay. And so we can see from the date of birth</p> <p>2 that Terri's birthday is December 12, 1980; is that</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. So she is something like 12 years old or --</p> <p>6 yeah, something like 12 years old when they were taking</p> <p>7 this statement; is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And do you remember if you got parental</p> <p>10 permission before taking her statement?</p> <p>11 A. I don't remember whether I did or not, and I</p> <p>12 honestly don't remember this girl.</p> <p>13 Q. Sure.</p> <p>14 And I think I'm going to ask you -- you</p> <p>15 know, it's a short statement, starting with "my name is</p> <p>16 Terri Vinson." Will you take just a minute to read</p> <p>17 through the statement and let me know when you're done?</p> <p>18 A. Sure.</p> <p>19 Okay. Okay.</p> <p>20 Q. Having read this, do you remember anything else</p> <p>21 about this -- this -- this statement?</p> <p>22 A. No, I don't, but, I mean, it's...</p> <p>23 Q. Yeah.</p> <p>24 And do you have any -- and as a juvenile,</p> <p>25 the policy -- was it the policy that you should have</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. I'm going to -- I'm going to pull up another</p> <p>2 exhibit. We'll mark this 6.</p> <p>3 (Exhibit 06 marked.)</p> <p>4 Q. Now, this is another supplement -- or for the</p> <p>5 record, Exhibit Number 6, the Bates is DA-34-432.</p> <p>6 Scrolling to the top, this is another</p> <p>7 supplement report, and it's a statement given to you by</p> <p>8 Terri Vinson; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And the date and time is April 12, '93, at</p> <p>11 10:00 a.m.; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. As far as you know, was this your first</p> <p>14 involvement in the investigation?</p> <p>15 A. Say that again.</p> <p>16 Q. As far as you know, is this your first</p> <p>17 involvement in the investigation?</p> <p>18 A. I don't remember if it was or not. I don't</p> <p>19 remember that.</p> <p>20 Q. Yeah.</p> <p>21 Do you remember any earlier dates being</p> <p>22 involved in the investigation?</p> <p>23 A. Her?</p> <p>24 Q. Yeah. Earlier dates.</p> <p>25 A. I cannot remember.</p>	<p style="text-align: right;">Page 121</p> <p>1 gotten parental permission before taking her statement?</p> <p>2 A. That was the policy, yes.</p> <p>3 Q. Okay. And to the extent that you did not, do</p> <p>4 you have any explanation for why you wouldn't have taken</p> <p>5 that information in this interview?</p> <p>6 A. I don't know that I didn't get -- ask for</p> <p>7 permission.</p> <p>8 Q. I understand, and I'm -- I'm not asking you to</p> <p>9 say that you didn't get permission.</p> <p>10 I guess what I'm asking is, sitting here</p> <p>11 today, do you have any explanation for, if you didn't,</p> <p>12 why you wouldn't have?</p> <p>13 A. I can't think of any.</p> <p>14 MR. JIM DARNELL: Object, speculation.</p> <p>15 Q. (BY MR. HILKE) So Terri does mention a -- let</p> <p>16 me ask a different question, and I'm going to stop</p> <p>17 sharing this.</p> <p>18 You did speak to a Terrance Farrar in this</p> <p>19 investigation, right?</p> <p>20 A. Yes.</p> <p>21 Q. And that was a statement you reviewed to</p> <p>22 prepare for this deposition?</p> <p>23 A. Yes.</p> <p>24 Q. And Terrance was also a juvenile, right?</p> <p>25 A. I don't remember whether he was. I don't</p>

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1 remember whether he was or he wasn't.
 2 Q. Let's mark this Exhibit 7. I'm going to share
 3 another exhibit.
 4 (Exhibit 07 marked.)
 5 Q. This is -- this is Exhibit 7. This is at
 6 City 15743. And this is another statement given to you,
 7 this time by Terrance Strong Farrar, right?
 8 A. Yeah.
 9 Q. And his date of birth was April 5, 1978, which
 10 would have made him like 15 at the time, right?
 11 A. Yes.
 12 Q. And I'm going to scroll down to the actual
 13 statement. And this is that same day, April 12, 1993,
 14 at 2:45 p.m., right?
 15 A. Yes.
 16 Q. So I go -- the first thing you write is, "My
 17 name -- my name" -- or the first thing in this statement
 18 is, "My name is Terrance Strong Farrar, and I am giving
 19 this statement to Detective Graves with the permission
 20 of my mother, Edna Strong."
 21 So at least in this case, you did document
 22 the parental consent you had gotten to take the
 23 statement, right?
 24 A. Yes.
 25 Q. And I -- I think once again -- and I know you

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1 reviewed this statement in -- in preparation, but I'm
 2 going to ask you to read this statement -- well, strike
 3 that.
 4 You had the chance to read this statement
 5 to prepare for the deposition, right?
 6 A. Uh-huh.
 7 Q. And do you have any independent memory of
 8 talking to Terrance Farrar at all?
 9 A. No.
 10 Q. Do you remember anything about what you said to
 11 him or he said to you other than what you've read in
 12 this report?
 13 A. (Moves head side to side.)
 14 Q. And I'm sorry. Was that a no?
 15 A. That's a no.
 16 Q. And Farrar mentioned Rudy Flores as a potential
 17 suspect with a motive to kill one of the victims, right?
 18 A. Right.
 19 Q. After you talked to Farrar, were you involved
 20 in pursuing that lead into Rudy Flores in any way?
 21 A. No. I turned the information over to -- it was
 22 either the sergeant or Marquez, and I gave it to him,
 23 and I believe Marquez followed up on the Flores
 24 brothers.
 25 Q. Yeah.

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1 Do you remember anything about the further
 2 investigation into the Flores brothers sitting here
 3 today?
 4 A. Not a lot, no, sir.
 5 Q. Okay. I'm going to stop sharing this now.
 6 And remind me, did -- did you look at a
 7 statement from Cynthia Talamantes to prepare for the
 8 deposition today?
 9 A. No.
 10 Q. Does that ring a bell at all?
 11 A. No.
 12 Q. All right. I'm going to -- you can probably
 13 guess where this is going. I'm going to share another
 14 exhibit. We'll mark this Exhibit 8. This is at
 15 DA-34-126.
 16 (Exhibit 08 marked.)
 17 Q. And this is another statement given to you,
 18 this time by Cynthia Talamantes; is that right?
 19 A. Yes.
 20 Q. And her date of birth is May 16, 1973, so she
 21 would have been 19. She's an adult, right?
 22 A. Yes.
 23 Q. And the date and time is April 14, 1993, at
 24 8:30 a.m. Do you see that?
 25 A. Yes.

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1 Q. And I'm now at the body of the statement, which
 2 is -- which is pretty short. Can you take a minute to
 3 read the statement and let me know when you're done?
 4 A. Sure.
 5 Yes.
 6 Q. Okay. So reading this, do you have any
 7 additional -- do you have any memory at all of talking
 8 to a Cynthia Talamantes?
 9 A. No, sir.
 10 Q. Okay. So -- and -- and her statement is that
 11 there was an Eddie Valdez she was in class with who said
 12 he knew the guy driving the car, right, in the shooting?
 13 And so I'm going to -- I'm going to stop sharing this
 14 now.
 15 Do -- do you recall speaking to an
 16 Eduardo -- Eduardo Valles about the shooting?
 17 A. Valles or Valdez?
 18 Q. I think I have it as Valles, V-A-L-L-E-S.
 19 A. I -- I could have. I don't remember it.
 20 Q. Let me share another exhibit with you.
 21 A. I -- I don't remember whether I talked to him
 22 or not.
 23 Q. Got it.
 24 I am now -- I am now sharing Exhibit 9.
 25 This is at DA-34-131.

<p style="text-align: right;">Page 126</p> <p>1 (Exhibit 09 marked.)</p> <p>2 Q. And this is another statement given to you,</p> <p>3 this time by Eduardo Valles; is that right?</p> <p>4 A. Yes.</p> <p>5 Q. And this is also at April 14, 1993, this time</p> <p>6 at 2:00 p.m.?</p> <p>7 A. Yes.</p> <p>8 Q. And you don't have the -- a memory of taking</p> <p>9 this statement at all, do you?</p> <p>10 A. I don't have a memory of taking -- it looks</p> <p>11 like I did, but I -- I do not have an independent memory</p> <p>12 of talking to the guy.</p> <p>13 Q. I understand.</p> <p>14 And could I again ask you to take a minute</p> <p>15 to read it and let me know when you're done?</p> <p>16 A. Sure.</p> <p>17 Okay.</p> <p>18 Q. Okay. Do you know who the VLH gang was?</p> <p>19 A. No, sir, I don't remember what that -- if I</p> <p>20 heard it, I might remember, but I don't have that on</p> <p>21 my --</p> <p>22 Q. Fair enough.</p> <p>23 And in this statement, Eduardo Valles says</p> <p>24 that he doesn't know anything about the shooting, but</p> <p>25 anything he said about it either he made up or he heard</p>	<p style="text-align: right;">Page 128</p> <p>1 in this investigation?</p> <p>2 A. I don't remember actually talking to him. I</p> <p>3 think I saw his name in one of the documents somewhere.</p> <p>4 Q. Okay. I think -- actually, I think that's</p> <p>5 right. Give me one second.</p> <p>6 Okay. I'm going to show you another</p> <p>7 exhibit. And then we'll mark this Exhibit 10.</p> <p>8 (Exhibit 10 marked.)</p> <p>9 Q. And this is not your statement, by the way.</p> <p>10 Let me expand. Okay.</p> <p>11 This is at DA-34-450, and this is a</p> <p>12 statement -- this appears to be a statement taken by</p> <p>13 Earl Arbogast given by Gilbert Garcia; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. And the date and time, this is actually on</p> <p>16 12:15 a.m. at April 14, 1993; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. And I'm just going to scroll down to a couple</p> <p>19 of things. So on the second paragraph, do you see it</p> <p>20 where it says, "About 7:50 a.m., I went to my</p> <p>21 girlfriend's house to give her a ride to school. Before</p> <p>22 going to get my girlfriend, Cynthia Talamantes, Anthony</p> <p>23 Iglesias had called me and come to my house because he</p> <p>24 wanted a ride to school." Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 127</p> <p>1 from someone else; is that right?</p> <p>2 A. I believe so, yes, sir.</p> <p>3 Q. And from this statement, does it look like --</p> <p>4 well -- and, presumably, this is a short statement</p> <p>5 because he wasn't telling you anything that you thought</p> <p>6 made him a likely suspect; is that right?</p> <p>7 A. It wasn't setting off alarms.</p> <p>8 Q. Or that -- that was likely to lead you to</p> <p>9 further useful information; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. And so you were able to rule him out because he</p> <p>12 didn't give you any details that were consistent with</p> <p>13 the nonpublic facts; is that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And it was important to document why he</p> <p>16 was ruled out, right?</p> <p>17 A. Yeah, it would -- probably, yeah. Absolutely.</p> <p>18 Q. And that's -- that's what this statement does,</p> <p>19 right? It -- it says, you know, he didn't know anything</p> <p>20 about it and couldn't give anything that made a</p> <p>21 connection, and so it was possible to rule him out,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. So I'm going to stop sharing this now.</p> <p>25 Do you remember talking to a Gilbert Garcia</p>	<p style="text-align: right;">Page 129</p> <p>1 Q. And then scrolling down a little, it says -- a</p> <p>2 few lines, it says, "Tony then told me that he had</p> <p>3 'fronted' Mando Lazo and his friends on a street called</p> <p>4 'Electric' on Friday night. 'Fronted' means that he had</p> <p>5 confronted the guys who were shot." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And then scrolling down to the next paragraph,</p> <p>8 it says, "After fourth period at school, I saw my</p> <p>9 girlfriend, who heard this guy named Eddie talking to</p> <p>10 another guy. Cynthia told me that she heard Eddie tell</p> <p>11 the other guy that a friend of his was in the car that</p> <p>12 shot Mando and Bobby."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And so based on the timing, this appears to be</p> <p>16 a statement taken by Arbogast very early in the morning</p> <p>17 the day you took statements from Eduardo Valles and</p> <p>18 Gilbert Garcia; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And -- and taking statements from Valles and</p> <p>21 Garcia, you would have expected to have this information</p> <p>22 that led to questioning them, right?</p> <p>23 A. Say that again.</p> <p>24 Q. Yeah.</p> <p>25 You would have expected to know the</p>

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1 information that Arbogast had got from Gilbert Garcia
 2 when you went to follow up on the leads that came from
 3 it, right?
 4 A. That -- that could be true, yes.
 5 Q. You would want to be able to confront the
 6 people you were interviewing with the information that
 7 had already been obtained; is that right?
 8 A. Yes.
 9 Q. Okay. I want to show you one other thing on
 10 this. Do you see at the bottom where it says, "Cynthia
 11 said she then asked Eddie what kind of car the guys had
 12 that shot Mando and Bobby, and Eddie told her it was a
 13 dark brown car. I know that a guy named Kiki drives
 14 like a dark brown Buick Regal, and Tony hangs around
 15 Kiki."
 16 Do you see that?
 17 A. Yes.
 18 Q. And is the color of the car used in the
 19 shooting the kind of corroborating detail you would be
 20 looking for in an investigation?
 21 A. It could be, yeah.
 22 Q. Okay. I'll stop sharing this now.
 23 MR. JIM DARNELL: Wally, can we take a
 24 break?
 25 MR. HILKE: Yes. Let's go off the record.

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1 MR. JIM DARNELL: Just so you know, I've
 2 got several hearings at two o'clock, so can we go to
 3 about 2:00 and take a lunch break?
 4 MR. HILKE: Sure. That sounds good.
 5 MR. JIM DARNELL: 2:00 our time.
 6 THE VIDEO TECHNICIAN: Okay. We are now
 7 off the record. The time is 1:32 p.m.
 8 (Break taken from 12:32 p.m. to 12:44 p.m.)
 9 THE VIDEO TECHNICIAN: We are back on the
 10 record for the deposition of Scott Graves being
 11 conducted by videoconference. My name is Jessica Chase.
 12 Today is July 28th, 2022, and the time is 1:44 p.m.
 13 Counsel, you may proceed.
 14 Q. (BY MR. HILKE) Sir, do you remember
 15 interviewing an Anthony Iglesias with Detective Arbogast
 16 in this case?
 17 A. I -- I don't recall it exactly, but I believe
 18 that -- that we probably did, yeah.
 19 Q. Sure.
 20 And I am going to share with you another
 21 exhibit. We'll mark this Exhibit Number 11. This is
 22 beginning at City 265.
 23 (Exhibit 11 marked.)
 24 Q. You notice Detective Arbogast's name at the
 25 bottom right of this report? And at the top, this is a

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1 supplementary report dated --
 2 MR. ALMANZAN: Give me a call.
 3 MR. HILKE: Someone may need to be on mute
 4 right now, maybe.
 5 Oh, Andy, you -- you may need to go on
 6 mute.
 7 Q. (BY MR. HILKE) And so you -- this is a report
 8 dated May 6, 1993; is that right?
 9 A. Yes.
 10 Q. And scrolling to the bottom of the second page,
 11 Detective Arbogast's name is on the bottom of the second
 12 page, right?
 13 A. Yes.
 14 Q. And I am now on the second page of the report.
 15 I'd like to -- looking at the top of the second page, do
 16 you see where it says, "Undersigned and Detective Graves
 17 interviews Iglesias and one of his -- the friends, Raul
 18 Rivas, and found no connection to this shooting.
 19 Detectives did learn that what Iglesias referred to was
 20 an altercation he and some friends had with Victim Lazo
 21 some two weeks prior on the east side of town."
 22 Do you see that?
 23 A. Yes.
 24 Q. And so sitting here today and having read that,
 25 do you have any additional independent -- do you have

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1 any independent recollection at all of interviewing
 2 Iglesias?
 3 A. No.
 4 Q. And to your knowledge, was there ever any
 5 follow-up investigation conducted about either Iglesias
 6 or the friend, Raul Rivas?
 7 A. I can't remember whether there was or not.
 8 Q. Sure.
 9 So sitting here today, you don't know if
 10 Anth- -- if Anthony Iglesias had an alibi or if that
 11 alibi was ever tested, do you?
 12 A. Yeah, I don't recall.
 13 Q. And you don't know if he owned the weapon that
 14 matched the caliber used in the shooting, do you?
 15 A. I don't know that.
 16 Q. And I'm going to stop sharing Exhibit 11 for a
 17 moment.
 18 And I'm actually going to go back to
 19 Exhibit 10 for a second. This is the Gilbert Garcia
 20 statement that Arbogast took again. So I'm drawing your
 21 attention to the paragraph that starts "about 7:50 a.m."
 22 here.
 23 And looking sort of towards the middle
 24 lower part of this paragraph, do you see where his
 25 statement says, "Tony then told me that him and Boochie

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1 and Raul were at a party somewhere near Andress High
2 School on Friday night. Tony said that Boochie
3 recognized Mando Lazo from ECH. Tony and Boochie are
4 from HK, and Tony said they didn't like ECH, so that is
5 when they went up to Mando and his friends. I knew
6 about the shooting, and I asked Tony who capped Mando
7 and Bobby. That is when Tony seemed like he got scared,
8 and he didn't want to say any more. I also remember
9 that Tony's brother, David, told me about a month ago
10 that Tony owns a .22 caliber -- caliber."

11 Do you see that section of the statement?

12 A. Yes.

13 Q. And so based on Garcia's statement, Tony has a
14 gun that matches the caliber used in the shooting; is
15 that right?

16 A. I didn't know the caliber of the shooting -- or
17 I don't know it, but if that's the caliber, then, yes,
18 then he would know it, or he said he knew it.

19 Q. And he's also got a gang-connected motive for
20 having a rivalry with -- with the ECH gang, which Mando
21 was in according to this statement; is that right?

22 A. It would appear.

23 Q. Yeah.

24 And so do you have any -- do you have an
25 explanation for why there isn't any more documentation

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1 on how this lead got closed out?

2 A. No.

3 Q. And it would have been appropriate to
4 investigate whether Tony actually had a gun matching the
5 murder weapon; is that right?

6 A. Yes.

7 Q. But from the reports you've seen, it's not at
8 all clear if that was ever closed -- if -- if the gun
9 was ever closed out, is it?

10 A. Not that I know of. I don't -- and I don't
11 know one way or the other.

12 Q. I'll stop sharing here.

13 Do you remember searching a Rick Martinez's
14 house in connection with this case?

15 A. I -- I don't remember it, but I believe we did.

16 Q. And do you remember whether you actually spoke
17 with Rick during the investigation?

18 A. I don't remember.

19 Q. I'm going to -- just one second.

20 I'm going to mark another exhibit. This
21 will be Exhibit 12. It's at Villegas J.S. 15848.

22 (Exhibit 12 marked.)

23 Q. Scrolling to the top, do you recognize this as
24 a supplement report dated May 5, 1993, at 10:30 a.m.?

25 A. Yes.

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1 Q. And scrolling to the bottom of that first page,
2 this is a report written and approved by Al Marquez; is
3 that right?

4 A. Yes.

5 Q. So I'm scrolling to the second page of the
6 report. Do you see the part that starts "on 4-14-93, a
7 statement was taken from Javier Flores a/k/a Dirt"?

8 A. Yes.

9 Q. And Javier Flores, he would have been one of
10 the Flores brothers who you were aware of as a potential
11 suspect; is that right?

12 A. Yes.

13 Q. And then I'm going to scroll down a few
14 sentences. Do you see where it reads, "In the statement
15 given by his brother, Rudy Flores (Dust), he indicated
16 that a Rick Martinez, who lives on Ajax Street, had been
17 responsible for the shooting. Martinez was brought into
18 the CAP office, and it was also determined that he was
19 not involved in the case. Flores was confronted as to
20 why he had indicated Martinez as the responsible party,
21 and he stated that he had advised undersigned that
22 Martinez had been worried that the police would think
23 that he may have been involved because of his past
24 history and involvement in gangs, which he, too, was a
25 member of"?

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1 Do you see that part of the statement?

2 A. Yes.

3 Q. And I'd like to -- I'd like to go back to
4 Exhibit 11 for a moment. This is Detective Arbogast's
5 report again.

6 And do you see at the bottom of -- of the
7 first page where it says, "One such source of this
8 information was from Tonya Vinson, whom undersigned took
9 a statement from. As a result of such information, both
10 Rudy and Javier Flores were interviewed on this case.
11 However, no connection was made to the Flores brothers.
12 Rudy Flores did implicate a Rick Martinez, who was also
13 brought to the CAP office and interviewed. No
14 connection could be made on Rick Martinez, who
15 cooperated in giving consent to detectives to search his
16 apartment for any weapons. Undersigned and Detective
17 Grave conducted the search of the Martinez home"?

18 Do you see that section here?

19 A. Yes.

20 Q. So Martinez's report, which we looked at first,
21 says that the connection to Rick Martinez may have had
22 something to do with a gang that Martinez was in; is
23 that right?

24 A. Right.

25 Q. But the gang Rick Martinez was in isn't

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1 mentioned any way -- where in either of these
 2 statements, is it?
 3 A. I didn't see it, no.
 4 Q. Yeah.
 5 And it's not fair -- and did you see in
 6 either statement any information that -- that why no
 7 connection was made what Rick Martinez's alibi was or
 8 anything explaining why he was cleared?
 9 A. No.
 10 Q. And then in -- presumably, when Rick Martinez
 11 is interviewed -- and, actually, strike that.
 12 The reports don't even say who talked to
 13 Rick Martinez when he came to the CAP office, do they?
 14 A. I hadn't seen anything.
 15 Q. And as a -- as a murder suspect, there should
 16 be enough information documented about Rick Martinez to
 17 explain why he was ruled out, right?
 18 A. I would think that there would be in there.
 19 Q. Yeah.
 20 And other than this one sentence that you
 21 and Detective Arbogast searched Rick Martinez's home,
 22 are you aware of any other documentation of the search
 23 that was conducted of the home?
 24 A. No.
 25 Q. And do you have any explanation for why there

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1 isn't more information on Rick Martinez in, I guess --
 2 A. No.
 3 Q. So I'm going to -- I'm going to stop sharing
 4 this exhibit.
 5 So on the night that you went to Danny
 6 Villegas's house, David Rangel was also interviewed; is
 7 that right?
 8 A. Who?
 9 Q. David Rangel or Rangel.
 10 A. I believe so, yeah.
 11 Q. Okay. And do you recall testifying at Daniel
 12 Villegas's first criminal trial that you came into
 13 contact with David Rangel on the telephone on
 14 April 21st, 1993?
 15 A. I do remember reading that, but I don't
 16 remember the context. I don't know if it was that he
 17 was calling in or what it was. I -- what it was about.
 18 Q. So you would -- so sitting here today, you
 19 don't remember who called who, whether you called him or
 20 he called you or the office; is that right?
 21 A. I can't think of a basis under which I would
 22 have called him, and I think it's probably more likely
 23 that he called.
 24 Q. Did you give him a ride to the police station
 25 after you talked with him on the phone?

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1 A. No.
 2 Q. And did you see David after he came to a police
 3 station that night?
 4 A. Did I see him?
 5 Q. Yes, sir.
 6 A. I don't recall seeing him, no.
 7 Q. Did you participate at all in questioning David
 8 after he came to the police station?
 9 A. I don't believe I did.
 10 Q. Do you know where -- do you know where David
 11 was questioned that night?
 12 A. No.
 13 Q. Did you know that David had a -- he had been
 14 accused of telephone harassment before -- at some time
 15 before he came into the station?
 16 A. It seems like I heard that in one of the
 17 trials, or that came up in one of the trials somewhere,
 18 but I -- I didn't know that, no.
 19 Q. Did you call David's house on April 21, 1993,
 20 and ask to speak to him?
 21 A. No.
 22 Q. Did you speak to his mother?
 23 A. I don't believe I did.
 24 Q. Did you tell her -- did you investigate a
 25 telephone harassment issue involving David Rangel?

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1 A. No.
 2 Q. To your knowledge, did David's mother ever call
 3 the El Paso police on April 21, 1993?
 4 A. I don't know if she did or not.
 5 Q. Were you aware that when you went to pick up
 6 Rodney Williams, Al Marquez was questioning David Rangel
 7 at the same time?
 8 A. I believe I was -- I -- he could have been. I
 9 don't remember whether I knew that or not. I don't
 10 know.
 11 Q. Okay. If you and Al Marquez were
 12 simultaneously investigating important witnesses on a
 13 double homicide, would you expect to be coordinating
 14 with one another as you did your questioning?
 15 A. I'm not sure what you're asking me.
 16 Q. If -- yeah, you -- I'm asking, if Al Marquez is
 17 interviewing someone who says he heard a confession on a
 18 double homicide, and Al Marquez tells you, "Hey, go pick
 19 up this other guy and -- and question him about the
 20 double homicide, also," would you expect Al Marquez --
 21 like would you expect to know that there was a
 22 simultaneous questioning going on?
 23 A. Yeah, I -- I would think I -- it's a good
 24 chance I might have known that, yeah.
 25 Q. And you might -- is one reason you'd expect to

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1 know that, so that you and Al Marquez could share
 2 information, if you needed to, based on what you were
 3 told in your -- in your interviews?
 4 A. Yeah, I -- that could happen, sure.
 5 Q. Can you think of any reason why Al Marquez
 6 wouldn't tell you about another witness he was
 7 interviewing at the same time?
 8 MR. JIM DARNELL: Object, speculation.
 9 Go ahead.
 10 A. I -- I don't know if there's a reason why he
 11 would do that or not. I don't know.
 12 Q. (BY MR. HILKE) But in your experience as a
 13 homicide detective, does it make sense to you that that
 14 information would be withheld from you?
 15 A. I -- I think "withheld" maybe isn't the right
 16 term. If somebody's talking to something, I don't think
 17 every time they hear something they kind of run out and
 18 tell everybody, "Hey, I just heard this." I don't think
 19 that kind of thing is going on much at all. Usually,
 20 there's briefings, and things like that, at various
 21 other points, or somebody'll tell you something that
 22 they think you -- they need you to know, you know.
 23 Sometimes that happens.
 24 Q. You were part of the group that went out to
 25 investigate two potential suspects in New Mexico in this

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1 investigation; is that right?
 2 A. Yes.
 3 Q. And those were Michael Johnston and Jacob
 4 Jauregui?
 5 A. Yes, I believe that was their names.
 6 Q. And they were both juveniles, right?
 7 A. I don't remember if they were or not. They
 8 could have been, sure.
 9 Q. Okay. Do you -- do you remember what role you
 10 played in arresting Michael Johnston?
 11 A. I didn't play a role. I waited. I was there
 12 with probably a group of, I want to say, ten of us.
 13 There was -- there was quite a few and I -- I don't know
 14 the exact count, but it was a big group. We were in
 15 multiple cars, and I didn't talk to anybody out on
 16 that -- you know, I waited and waited and -- and,
 17 basically, that was it. The supervisors and Marquez
 18 were kind of running what was happening out there.
 19 Q. Okay. And -- okay. So -- but you went out
 20 there -- so what -- what -- what, if anything, did you
 21 do while the group was in New Mexico?
 22 A. Wait.
 23 Q. Okay. Anything other than wait?
 24 A. No.
 25 Q. And eventually, the boys were brought from

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1 New Mexico to El Paso, right?
 2 A. Yes.
 3 Q. And they were questioned at the El Paso Police
 4 Department?
 5 A. Probably so, yes, sir.
 6 Q. Did you transport either of them back?
 7 A. Did I what?
 8 Q. Did you transport either Johnston or Jauregui
 9 back?
 10 A. No.
 11 Q. What did you do after you got back to El Paso?
 12 A. I don't remember, but it -- I wasn't involved
 13 in what -- the questioning, and so forth, that they were
 14 doing there.
 15 Q. What -- what officers went out to New Mexico?
 16 A. The ones that I remember being out there was
 17 Earl, a guy named Link Brown. I think -- there's a
 18 officer who has passed away, Joe Laredo, I think was out
 19 there. Marquez was out there. And there was -- there
 20 was others. They -- they wanted to go out in multiple
 21 cars because they didn't know what the security
 22 situation was going to be when they got out there.
 23 Q. What security risks were they anticipating?
 24 A. First, it was Chaparral. You know, that -- if
 25 you live here, you understand that implication. The --

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1 the other thing was they just didn't know how many
 2 people were going to be out there. You know, people out
 3 there tend to own long weapons, so I think that was a
 4 concern. And there was some coordinating that needed to
 5 happen with the Dona Ana Sheriff's office as well.
 6 Q. You mentioned supervisors. Do you remember
 7 what supervisors came out?
 8 A. I think it was Ocegueda, Pete Ocegueda.
 9 Q. Okay. And were there any juvenile officers out
 10 there?
 11 A. Oh, Charlie was out there, too, yes, sir.
 12 Q. That's Charlie Ortega?
 13 A. Yes, sir.
 14 Q. Okay. And just so I heard -- the other
 15 officers I heard you say were Earl Arbogast, Link Brown,
 16 Al Marquez, and Joe Laredo. Did I miss anyone?
 17 A. I think I'm missing people in there because
 18 there was a lot of us.
 19 Q. So -- so sitting here today, you're confident
 20 that you did no questioning of Michael Johnston or Jacob
 21 Jauregui; is that right?
 22 A. Yes.
 23 Q. Do you know if Johnston -- Johnston or
 24 Jauregui's parents consented to their interrogations?
 25 A. I don't know.

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1 Q. Do you know if either of them said, "Don't
2 question my kid until he has a lawyer?"
3 A. (Moves head side to side.)
4 Q. If one of their parents had said that, it would
5 have been totally inappropriate to question them without
6 a lawyer, right?
7 MR. JIM DARNELL: Object to speculation and
8 foundation.
9 A. I -- I don't know. I -- I know that they were
10 trying to follow New Mexico law out there and that --
11 that was the concern at the time, I think, by the -- the
12 sheriff's out there.
13 Q. (BY MR. HILKE) According to your training, can
14 a juvenile be interrogated without a lawyer if their
15 parents -- if one of their parents says, "don't question
16 my kid without a lawyer?"
17 MR. JIM DARNELL: Are you asking him under
18 Texas law or under New Mexico law?
19 Q. (BY MR. HILKE) I'm -- I'm only asking about
20 your training as to interrogation of juveniles.
21 MR. JIM DARNELL: I'll object as calling
22 for speculation.
23 But if you can, answer it.
24 A. I do not recall any training regarding if a
25 parent tries to invoke someone -- their child's Fifth

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1 Amendment rights. I don't -- I don't recall any
2 training on that.
3 Q. (BY MR. HILKE) Okay. So you went to -- on --
4 in the evening of April 21st, 1993, you did go to
5 Daniel's house; is that right?
6 A. Yes.
7 Q. And who are all of the officers who went to his
8 house that night?
9 A. I know for certain it was Marquez, me,
10 Arbogast, and I'm not sure if Charlie was there or not.
11 Charlie might have been there.
12 Q. Do you remember anyone else?
13 A. Off the top of my head, I do not.
14 Q. And who was the first officer to enter Daniel's
15 house?
16 A. That probably would have been Marquez.
17 Q. Marquez?
18 And do you remember where you were along
19 with the group that entered, first, last, middle?
20 A. I don't know. I was somewhere in there. I --
21 I don't remember which -- which place I had.
22 Q. What was the first thing you saw when you went
23 in the house?
24 A. There were several people in there. I -- I
25 don't remember who all they were. I think it -- I -- I

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1 don't remember their faces. I think what we were
2 interested in doing initially was just getting everybody
3 in the house, like knowing where they were and in a
4 place where we could see them.
5 Q. Sure. The first thing you did was to secure
6 the house, basically; is that right?
7 A. Yes.
8 Q. And that would have been typical in serving a
9 warrant?
10 A. Yes.
11 Q. And what part of that -- did the officers have
12 to spread out to secure the house?
13 A. I don't think much, no.
14 Q. So what's the next thing that happened after
15 the -- after you had spread out and secured the house?
16 A. We searched, basically.
17 Q. What -- what were you searching for?
18 A. Any -- any evidence that was connected to the
19 crime. Of course, the firearm, if there was one, any
20 ammunition, things like that.
21 Q. Did you find any physical evidence that was
22 linked to the crime?
23 A. Not that I recall.
24 Q. Okay. And how long did the search take?
25 A. It wasn't -- it wasn't more than an hour, I

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1 don't think.
2 Q. Was it more than 15 minutes, the search?
3 A. Oh, I'm certain of that, yeah.
4 Q. Was it more than half an hour?
5 A. Probably.
6 Q. And in addition to searching, you're also there
7 to make an arrest, right?
8 A. I believe so, yeah.
9 Q. You know from Rodney Williams that -- you know
10 that Rod- -- Rodney Williams's statement puts Daniel
11 Villegas as the shooter, right?
12 A. Yes.
13 Q. And the arrest warrant you have is for Marcos
14 Gonzalez, right?
15 A. I think so, yeah.
16 Q. And so you're looking to arrest both of those
17 people, if you find them, right?
18 A. Yes.
19 Q. And so at some point, as part of your procedure
20 in making an arrest, are they handcuffed?
21 A. I would assume that they were, yes.
22 Q. Yeah.
23 And would they have been handcuffed before
24 the search commenced?
25 A. Probably.

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1 Q. Yeah.

2 Who handcuffed Marcos?

3 A. I don't know.

4 Q. Who -- who handcuffed Daniel?

5 A. Don't know that, either.

6 Q. Okay. And after the search, what did you do?

7 A. We left out of there. We had a brief stop

8 where we kind of huddled and then said, okay, you go

9 here, you go here, you go there, and -- and then I went

10 to CAP.

11 Q. Okay. Were either Marcos or Daniel read any of

12 their rights or warnings at Daniel's house?

13 A. I don't remember if that happened.

14 Q. And the practice -- your practice was that for

15 suspects to sign Miranda cards after being read their

16 Miranda warnings, right?

17 A. Yes.

18 Q. And so to the extent either of them were read

19 Miranda warnings, there should be signed Miranda cards

20 from that time; is that right?

21 A. Yeah. Well, normally, when we read them --

22 when we would read them their rights, they -- it was at

23 the point where we were going to take a statement from

24 them, and then they would sign it.

25 Q. Right. If they weren't read their rights, you

Page 151

1 wouldn't expect a card, right?

2 A. Well, but some guys will tell them their rights

3 without actually signing off on a card. If they're just

4 in the field, they'll give them initially their -- their

5 rights.

6 Q. And was that consistent with El Paso's policy,

7 that you didn't necessarily have to document the first

8 time you read a suspect their rights if you weren't

9 taking a statement?

10 A. If you weren't taking a statement.

11 Q. And who did you ride with -- who was in your

12 vehicle when you left Danny's house?

13 A. I don't remember exactly, but I think I had

14 Marcos.

15 Q. Do you remember having a passenger in your

16 vehicle?

17 A. Like another officer?

18 Q. Yes, sir.

19 A. I could have, but I -- I don't remember off the

20 top of my head when they're out.

21 Q. Was there any disruption of the house?

22 A. There was angry people --

23 Q. Uh-huh.

24 A. -- at the house.

25 Q. Who -- who was angry at the house?

Page 152

1 A. It -- it -- as I recall, I believe it was the

2 mother who was the most vocal of everybody, and she was

3 vocal.

4 Q. And who was she angry with?

5 A. She was directing that primarily at Marquez.

6 Q. And what do you remember the mother doing while

7 you were at the house?

8 A. Being very angry.

9 Q. Yeah.

10 And how did you know she was very angry?

11 A. I heard her.

12 Q. Okay. So it was verbal? It was what she was

13 saying?

14 A. She was being like very verbally aggressive,

15 yes.

16 Q. Okay. Did she do anything to cause a commotion

17 other than being verbally aggressive?

18 A. No, but that -- you know, it puts everybody on

19 higher alert.

20 Q. Yeah.

21 Did -- did anyone else cause a commotion

22 while you were at the house?

23 A. I don't -- I don't remember. I do remember his

24 mom, but I don't -- I don't remember if anybody else was

25 contributing to that or...

Page 153

1 Q. And did anyone ask for permission to take

2 Daniel and interrogate him?

3 A. I don't recall, no.

4 Q. And did anyone give permission?

5 A. I don't recall that, either.

6 Q. And according to the El Paso policies, if

7 permission was given, that should have been documented,

8 right?

9 A. Yes.

10 Q. And -- and you're not aware of permission being

11 documented anywhere, are you?

12 A. No.

13 Q. And do you remember anything else from being at

14 Daniel's house?

15 A. No.

16 Q. You mentioned that you-all made a -- made a

17 stop after leaving Daniel's house. Who was -- who was

18 present when you stopped?

19 A. So the same -- essentially, the same people

20 that were at the -- the house.

21 Q. And -- and where did you stop?

22 A. Just at the -- just at the entrance to -- right

23 off of Wren Street, there's an entrance to what used to

24 be Northpark Mall, and it was right at that very

25 entrance. It's like we just pulled off the road.

Page 154

1 Q. Okay. And that entrance, is that at the, you
2 know, west side, south side, north side? What side of
3 the mall is that on?
4 A. It's on the north side.
5 Q. The north side.
6 And what did you do -- what occurred while
7 you were making that stop?
8 A. Just a quick huddle. It was a quick huddle of,
9 okay, take him over here. We're going to go over there
10 and -- and that type of conversation, and then we broke
11 the huddle and left.
12 Q. So you discussed where Marcos Gonzalez and
13 Daniel Villegas would be taken; is that right?
14 A. Yes.
15 Q. And where -- where was it decided that you were
16 going to take Marcos Gonzalez?
17 A. To the CAP office.
18 Q. And where was it decided that Daniel Villegas
19 would be taken?
20 A. I -- I believe he was taken over to JPD.
21 Q. Okay. And was there -- was there any doubt
22 before you made that stop that those would be the
23 appropriate place to take the two?
24 A. We didn't have that conversation prior to that
25 because it -- because of the condition at the house.

Page 155

1 Q. Right, but what I'm asking is, is there
2 anywhere you would have taken Marcos Gonzalez other than
3 the CAP offices?
4 A. No.
5 Q. And is there any way you're aware that -- and
6 who -- who drove Danny Villegas?
7 A. I don't specifically remember, but it was
8 either Charlie or Al, or it could have been both of them
9 in the same car. I -- I'm not sure.
10 Q. And was there anywhere that he could -- Danny
11 Villegas could have been taken next other than JPD?
12 A. Any other place? I don't -- I don't think so.
13 I think JPD was the appropriate place to take him.
14 Q. Okay. And other than where they were going to
15 be taken, did you discuss anything else during the
16 huddle?
17 A. No.
18 Q. And did -- did anything else transpire during
19 the huddle?
20 A. No.
21 Q. And so that then, after the huddle, did you
22 leave the Northpark Mall?
23 A. Yes.
24 Q. And where did you go next?
25 A. The CAP office.

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1 Q. Okay. And did any -- did any other officers
2 follow you to the CAP office?
3 A. I don't remember if Earl did or not, but it --
4 it would seem like he did, but I -- I don't remember
5 specifically.
6 Q. Yeah.
7 Why do you think Earl would have gone --
8 would have followed you?
9 A. Because I think -- I think Al and Charlie had
10 Villegas, if I remember correctly.
11 Q. So you took Marcos Gonzalez back to the CAP
12 office, right?
13 A. Yes.
14 Q. And about how long did it take you to get from
15 Northpark Mall to the CAP office?
16 A. It probably would have been one, maybe two
17 minutes, I guess.
18 Q. How long in total did you spend at Danny
19 Villegas's house?
20 A. How much time in total?
21 Q. Yes, sir.
22 A. I don't -- I don't know, but it doesn't seem
23 like it was more than an hour, at most.
24 Q. Yeah.
25 Okay. So -- and when you -- when you and

Page 157

1 Marcos arrived at the CAP office, what was the next
2 thing you did?
3 A. Talked to him.
4 Q. And did you -- where did you talk to him?
5 A. In my cubicle, I believe, or -- yeah, I believe
6 it was in my cubicle.
7 Q. And did you take him directly there?
8 A. As far as I can remember, yeah.
9 Q. And there isn't anywhere that -- else that you
10 had to take him other than your cubicle after bringing
11 him in, was there?
12 A. No. There -- I -- I can't think of any other
13 place.
14 Q. And Marcos eventually made a statement to you
15 that was a confession of his role in the shooting,
16 right?
17 A. Yes.
18 Q. And how long -- how long did you talk to him
19 before it became clear that you were going to be able to
20 get a confession statement from him?
21 A. I don't think it was real long. I don't
22 remember exactly how long, but I don't think it was that
23 long.
24 Q. Okay. Was it -- did you talk to him for more
25 than a half an hour before he started -- before you were

Page 158

1 able to start taking his statement?

2 A. I don't think -- if it was a half an hour, I

3 think it was much more than half an hour.

4 Q. Okay. And between when you took him to the CAP

5 office and -- and when you started taking his

6 confession, do you leave him alone in your office at any

7 time?

8 A. No.

9 Q. And was -- was he handcuffed while you were

10 speaking to him?

11 A. Probably, but we would also take handcuffs off

12 if we didn't feel like they were going to attack us or

13 anything like that. We'd try to make folks comfortable.

14 Q. Was anyone else with you while you were talking

15 to Marcos?

16 A. I don't think so, or maybe Earl was in and out.

17 I -- I don't remember specifically who was there, and

18 like I said, I think it was -- if anybody was there, it

19 was probably Earl.

20 Q. Okay. And how long did it take to take his

21 confession?

22 A. Maybe half an hour. Half an hour or so.

23 Q. Okay. What did -- what did you do after you

24 were done taking his confession?

25 A. I -- I don't know that, what we did.

Page 159

1 Q. So by the time you talked to Marcos Gonzalez,

2 both David Rangel and Rodney Williams had implicated

3 him, right?

4 A. Say that again.

5 MR. JIM DARNELL: You broke up again,

6 Wally. Sorry.

7 MR. HILKE: I'm sorry.

8 Q. (BY MR. HILKE) By the time you talked to

9 Marcos, both David Rangel and Rodney Williams had

10 already implicated him, right?

11 A. I believe so, yeah.

12 Q. And you wouldn't -- you wouldn't question --

13 you wouldn't interrogate a murder suspect you had an

14 arrest warrant for without knowing what the statements

15 against him said, would you?

16 A. That's probably true, yeah.

17 Q. And would you -- did you actually have a

18 physical copy of the two statements that had already

19 been taken by Rodney Williams and David Rangel?

20 A. No.

21 Q. Why didn't you have them?

22 A. I -- I don't think I had copies of their

23 statements.

24 Q. Is -- is that -- is that unusual to not have

25 copies of the statements when you interrogate a murder

Page 160

1 suspect?

2 A. That's not unusual.

3 Q. Was there anything stopping you from getting a

4 copy of those statements if you had wanted them?

5 A. I don't think I thought about that.

6 Q. Right, but looking back, is there any reason

7 you couldn't have gotten them if you wanted them?

8 A. Probably.

9 Q. Is there a reason you couldn't have gotten

10 them?

11 A. I don't think there is a reason. I could have

12 gotten them if I would have wanted to.

13 Q. Okay. Thank you.

14 Did -- and, of course, you wouldn't

15 question a murder suspect in custody without giving him

16 his Miranda warnings first, right?

17 A. Yes.

18 Q. And in 1993, as a CAP detective, could you have

19 pulled up the statements associated with an -- this

20 investigation from a computer terminal?

21 A. I don't remember if that was possible in that

22 system, and I know it's -- nowadays, it's hard to fathom

23 that, but we did not have cell phones, and we did not

24 have good computers.

25 Q. I -- I under- -- I'm reminded of the MS DOS

Page 161

1 machines that were in my -- that I -- anyways...

2 Okay. So your practice for taking a

3 confession was to try to leave as much as reasonably

4 possible in the suspect's own words, right?

5 A. Yeah. It -- it was, you know, paraphrased,

6 like I explained it before. It -- it -- and -- but,

7 yeah, you're trying to get what they're telling you and

8 get that into the statement.

9 Q. So Marcos told you on his own that he was with

10 Snoopy and Popeye the night of the shooting, right?

11 A. Yes.

12 Q. And did you lead him in any way? Did you

13 suggest the name Snoopy and Popeye to him?

14 A. No.

15 Q. He put in both of those names on -- on his own;

16 is that right?

17 A. Yes.

18 Q. And sitting -- sitting here today, you know

19 that Snoopy was the wrong nickname, right?

20 A. It was what?

21 Q. It was not -- that there was no Snoopy. The

22 nickname of the person involved was actually Droopy; is

23 that right?

24 A. I think so, yeah.

25 Q. And do you have any explanation for how Marcos

Page 162

1 messed up the nickname?

2 A. I do not.

3 Q. And did you ever ask him for an explanation?

4 A. I probably did. I don't know if I did or not,

5 honestly.

6 Q. Okay. And if -- if he gave you an explanation

7 for why he got the name of someone in the murder vehicle

8 wrong, you would have written that down, right?

9 A. I would have tried to, yes.

10 Q. Okay. And did Marcos know any nonpublic facts

11 about the shooting?

12 A. I don't remember.

13 Q. And would you have noted the nonpublic facts

14 Marcos knew about the shooting in taking his confession?

15 A. Do you mean would I have -- what do you mean

16 exactly?

17 Q. Well, yeah. What I mean is, if someone giving

18 you a confession shares nonpublic facts with you, you're

19 going to want to write those down, right?

20 A. In their statement, yes.

21 Q. Yeah. You're going to make an effort to make

22 sure the confession they sign includes the nonpublic

23 facts that they gave you, right?

24 A. Yes.

25 Q. To your knowledge, were there any

Page 163

1 inconsistencies which -- with what Marcos confessed to

2 and what the victims of the shooting said about the

3 shooting?

4 MR. JIM DARNELL: Object to speculation.

5 The victims of the shooting died.

6 Q. (BY MR. HILKE) Let me clarify. There were two

7 witnesses who were with the people killed in the

8 shooting, right? Are you -- are you aware that there

9 were two witnesses who were walking with the victims of

10 the shooting?

11 A. I -- I think -- I think that is the case, yes.

12 Q. Sure. Do the names Juan Medina and Jesse

13 Hernandez sound familiar to you?

14 A. Vaguely, yes.

15 Q. And to your knowledge, was any investigation

16 done between what those two survivors said and what

17 Marcos Gonzalez said, any incon- -- about any

18 inconsistencies?

19 A. I don't know.

20 Q. So, ultimately, was Marcos Gonzalez taken to --

21 taken to jail after you would have done -- after he was

22 done at the CAP office that night?

23 A. I believe so.

24 Q. Were you the one who transported him?

25 A. I don't remember specifically, but I wouldn't

Page 164

1 be surprised if I was.

2 Q. Yeah.

3 After Marcos left the CAP office and was

4 taken to jail, did you do anything else that night on

5 this investigation?

6 A. I don't -- I don't think I did and I -- I could

7 have, but I don't think that I did.

8 Q. Did -- after that night, were you involved in

9 the Electric Street shootings investigation in any way?

10 A. Not that I can remember.

11 Q. Did you eventually find out that Popeye and

12 Droopy could not have been in the car on the night of

13 the shooting?

14 A. I did not learn that until just -- it was much

15 later on.

16 Q. Okay. And so you don't have any explanation

17 for why Rodney and Marcos -- sitting here today, can you

18 explain why both Rodney and Marcos named two people as

19 being in the car who could not have been in the car?

20 A. No.

21 Q. And after -- while you were talking to --

22 strike that.

23 You knew -- was it your understanding when

24 you left the Northpark Mall that Danny Villegas was

25 going to be interrogated if he agreed to give a

Page 165

1 statement?

2 A. I knew he was going to be taken to JPD, and

3 they were going to probably try to get a statement from

4 him. I mean, that -- that was inferred.

5 Q. Yeah.

6 And at this point in the investigation,

7 you've got two good suspects, right, who are named by

8 others who were at the shooting or being in the car at

9 the time of the shooting, right?

10 A. Yes.

11 Q. And if all goes well, you and the other

12 detectives are going to interrogate both of them around

13 the same time, right?

14 A. We're going to do what?

15 Q. Interrogate both of them.

16 A. You mean both of the suspects?

17 Q. Yes, sir.

18 A. Yes.

19 Q. And so it -- it would have been standard -- but

20 you couldn't do that in the same place because Daniel is

21 going to have to get questioned in a juvenile building,

22 and Marcos was getting questioned at CAP, right?

23 A. Yes.

24 Q. And what was --

25 MR. JIM DARNELL: Wally, you are breaking

Page 166

1 up again some.

2 MR. HILKE: I'm sorry. Let me try speaking

3 up, and let's see if that helps.

4 MR. JIM DARNELL: Is there another computer

5 in the room close to you? It sounds like you may be

6 getting feedback.

7 MR. TSCHIRHART: Yeah, it sounds like

8 there's -- it sounds like there's an echo, Wally,

9 particularly when you pull back from the computer.

10 MR. HILKE: Let me try staying -- does it

11 help if I stay closer?

12 MR. JIM DARNELL: Yes.

13 MR. HILKE: How about I stay closer?

14 MR. JIM DARNELL: Except we got to look at

15 you a lot closer.

16 MR. HILKE: I apologize for that.

17 Q. (BY MR. HILKE) The -- right. So after you

18 took Marcos's first statement, did you talk to someone

19 who was in -- who was interrogating Daniel Villegas?

20 A. Yes.

21 Q. Who did you talk to?

22 A. It was either Marquez or Charlie Ortega, but I

23 think it was probably Marquez.

24 Q. And to your knowledge, Marquez was the one who

25 actually interrogated Daniel, right?

Page 167

1 A. Yes.

2 Q. And so if he was available, he would have been

3 the better one to talk to, right?

4 A. Yes.

5 Q. So what did you tell whoever you talked to

6 about your interrogation with Marcos?

7 A. Just what -- what had happened and what he told

8 me.

9 Q. Okay. And -- and you had the statement typed

10 up at that point, right?

11 A. Probably safe, yes.

12 Q. And so you would have been able to reference

13 everything you had just written down; is that right?

14 A. Probably, yes.

15 Q. Okay. And did you exchange any other

16 information on that call?

17 A. Probably. Probably we did.

18 Q. What else did you -- what other information did

19 you exchange?

20 A. I think he probably told me what Villegas was

21 telling him.

22 Q. Anything else?

23 A. Not that I can recall.

24 Q. And after you got Marcos's first statement, you

25 ultimately -- strike that.

Page 168

1 You ultimately took two statements from

2 Marcos, right?

3 A. Yes.

4 Q. And some time elapsed between the two, right?

5 A. A little bit, yes.

6 Q. During the time in between, did you leave

7 Marcos's presence at any time?

8 A. I don't think so. He -- he would have always

9 been like within where he's not going to get up and get

10 away without me noticing it.

11 Q. Sure.

12 So you were -- you are responsible for

13 making sure he doesn't -- he doesn't try to run away,

14 right?

15 A. Right. Yes.

16 Q. And you didn't -- you didn't ask anyone else to

17 baby-sit him while he was there with you at CAP, did

18 you?

19 A. I don't believe I did, no.

20 Q. Yeah.

21 So other than whoever you talked to on the

22 phone, did you communicate with anyone -- well, strike

23 that.

24 How many phone calls did you have that

25 night to whoever it was at JPD interrogating Danny?

Page 169

1 A. I -- I don't remember more than a phone call.

2 Q. You only remember talking one time; is that

3 right?

4 A. I think so, yeah.

5 Q. And in Marcos's first statement, he says that

6 he wasn't even in the car during the shooting, right?

7 A. Right.

8 Q. And then you hear from whoever's on the phone

9 that Danny has said that he was in the car, right?

10 A. Probably, yeah.

11 Q. And you con- -- you -- you ended up accusing

12 Marcos of lying to you based on that information, right?

13 A. Probably.

14 Q. Do you remember at Danny's second criminal

15 trial being asked these questions and giving these

16 answers? Well, I'll -- I'll read it.

17 A. Okay.

18 Q. "Question: How do you approach him the second

19 time when you are now informed that the first statement

20 may be false?

21 "Answer: Well, how I approached him was

22 with the attitude of either Marcos was lying or Danny

23 was lying. One of the two of them was lying. And so

24 what I did is I sat down with Marcos, and I told him

25 that I thought he was lying.

Page 170

1 "Question: And what did he tell you?
2 "Answer: He asked me why I thought -- you
3 know, why I thought that he was lying, and I told him,
4 you know, 'Your story is not matching up with the other
5 witnesses in the case, and you're lying.' And at that
6 point, he agreed that I was -- that he was lying, and
7 then he gave me the second story."

8 Do you remember being asked those questions
9 and giving those answers?

10 A. You know, I believe that is exactly what
11 happened. I -- I don't remember what Marcos looks like.

12 Q. Okay.

13 A. So, I mean, it's been 29 years. Was that the
14 exact words that we used with each other? I don't know.
15 But is that, in essence, what happened? Yes.

16 Q. Okay. And Marcos -- does it sound right that
17 Marcos was 17 years old when you interrogated him?

18 A. It sounds about right, yeah.

19 Q. And if -- if -- if he's 17 years old, that
20 means he doesn't need any -- he doesn't get any of the
21 juvenile protections. He's an adult as far as that
22 goes, right?

23 A. Yes, sir.

24 Q. And you were not trained that a 17-year-old
25 needed to be treated any different than an older adult,

Page 171

1 were you?

2 A. That's true.

3 Q. These interrogations -- or your interrogation
4 of Marcos took place -- well, strike that.

5 Does it sound right that the -- that the
6 interrogations of Marcos and Daniel Villegas took place
7 only about a couple of weeks after the shootings
8 themselves?

9 A. I think that sounds correct, yeah.

10 Q. And so with only a couple of weeks having
11 passed, you would expect that anyone who was in the car
12 would have a pretty fresh memory of the shootings,
13 right?

14 MR. JIM DARNELL: Object, calls for
15 speculation.

16 Go ahead.

17 A. I'm not sure what their perceptions would have
18 been, and I can't -- a lot of stress can alter
19 perceptions.

20 Q. (BY MR. HILKE) Sure.

21 In any event, if there were inconsistencies
22 in the statements of the people in the car, you would
23 want to address those inconsistencies, right?

24 A. Yes.

25 Q. And you took statements from Rodney Williams

Page 172

1 and Marcos Gonzalez less than six hours apart, right?

2 A. I think so, yeah.

3 Q. Yeah.

4 And you were trying to see if there were
5 any inconsistencies in what Marcos Gonzalez told you,
6 right?

7 A. Yes.

8 Q. And, in fact, you confronted him about the
9 inconsistency with Daniel -- what Daniel had said about
10 whether or not Marcos was in the car, right?

11 A. Yes, sir.

12 Q. And so do you recall that Rodney and Marcos
13 said different things about how the group met up before
14 the shooting?

15 A. I -- I don't recall specifically, but I
16 wouldn't be surprised.

17 Q. Sure.

18 And is it consistent with what you remember
19 that Rodney said he, Marcos, and Rodney -- strike that.

20 If Rodney said he, Marcos, and Danny were
21 hanging out at the Village Green when Popeye and Snoopy
22 drove up, but Marcos said that it was just Marcos and
23 Rodney, and Danny, Snoopy, and Popeye all drove up
24 together, would that inconsistency in where Danny was
25 before the shooting have been important to the

Page 173

1 investigation?

2 MR. ALMANZAN: Objection, calls for
3 speculation.

4 Q. (BY MR. HILKE) Go ahead.

5 A. It -- it could have been.

6 MR. JIM DARNELL: Wally, are we getting
7 close to a stopping point?

8 MR. HILKE: Yes, we are if -- I don't --
9 are you having to move to a physical location for the
10 hearings?

11 MR. JIM DARNELL: No, but I've got to -- I
12 want to look at the file and make sure I'm ready because
13 I've got three hearings all in the same place.

14 MR. HILKE: If I could take five minutes, I
15 think I can wrap up a section I'm on.

16 MR. JIM DARNELL: Okay.

17 Q. (BY MR. HILKE) All right. And, for example,
18 where Daniel was before the shooting could have been
19 important to an alibi he might try to give, right?

20 A. True.

21 Q. You'd like to pin down where Danny was the
22 night of the shooting, right?

23 A. Yes.

24 Q. Did you ask Marcos to explain the inconsistency
25 in where Danny was before the shooting?

<p style="text-align: right;">Page 174</p> <p>1 A. I don't remember, and I am not sure if I did or</p> <p>2 not.</p> <p>3 Q. Sure.</p> <p>4 If -- if you had asked him and he had given</p> <p>5 an answer, you would have written that down, right?</p> <p>6 A. Yes.</p> <p>7 MR. JIM DARNELL: Object, calls for</p> <p>8 speculation.</p> <p>9 Q. (BY MR. HILKE) And are you aware that Rodney</p> <p>10 described the car as having four doors, and Marcos</p> <p>11 described the car as having two doors?</p> <p>12 A. I don't remember that.</p> <p>13 Q. And you would have wanted to know how many</p> <p>14 doors the car had so you could try to go and find it,</p> <p>15 right?</p> <p>16 A. Yeah.</p> <p>17 Q. And did you ask Marcos to explain that</p> <p>18 inconsistency?</p> <p>19 A. I don't remember.</p> <p>20 Q. If he had given you an explanation, you would</p> <p>21 have written it down, right?</p> <p>22 MR. ALMANZAN: Objection, calls for</p> <p>23 speculation.</p> <p>24 Q. (BY MR. HILKE) Was your answer a yes?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 176</p> <p>1 speculation.</p> <p>2 A. Probably.</p> <p>3 Q. (BY MR. HILKE) And Rodney said that Popeye had</p> <p>4 a gun under his seat in a white -- wrapped in a white</p> <p>5 cloth, but Marcos said they went to Snoopy's house to</p> <p>6 get Snoopy's gun, right?</p> <p>7 A. Right.</p> <p>8 Q. And did you ask Marcos to explain that</p> <p>9 inconsistency?</p> <p>10 A. I don't remember if I did or not.</p> <p>11 Q. But if Marcos had explained an inconsistency</p> <p>12 about the murder weapon, you would have written that</p> <p>13 down, right?</p> <p>14 MR. JIM DARNELL: Objection --</p> <p>15 A. Yes.</p> <p>16 MR. JIM DARNELL: -- calls for</p> <p>17 speculation.</p> <p>18 Q. (BY MR. HILKE) Was that a yes?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And Rodney said that after the shooting,</p> <p>21 they were dropped off at Danny's house, but Marcos said</p> <p>22 they were dropped off at Village Green, right?</p> <p>23 A. I don't remember.</p> <p>24 Q. And did you ask Marcos to explain that</p> <p>25 inconsistency?</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. And Rodney said that they did a beer run at the</p> <p>2 Diamond Shamrock, but Marcos said they did the beer run</p> <p>3 at a 7-Eleven, right?</p> <p>4 A. Probably.</p> <p>5 Q. And did you ask Marcos to explain that</p> <p>6 inconsistency?</p> <p>7 A. I might have. I -- but I don't remember</p> <p>8 specifically.</p> <p>9 Q. And if he had explained it, you would have</p> <p>10 written it down, right?</p> <p>11 A. Right.</p> <p>12 MR. JIM DARNELL: Object, calls for</p> <p>13 speculation.</p> <p>14 Q. (BY MR. HILKE) Was that a yes?</p> <p>15 A. Yes.</p> <p>16 Q. And Rodney said that when confronting the</p> <p>17 victims, Popeye yelled, "Que Barrio," and Marcos said</p> <p>18 that Popeye yelled "VNE putos, right?"</p> <p>19 A. I believe so.</p> <p>20 Q. And did you ask Marcos to explain that</p> <p>21 inconsistency?</p> <p>22 A. I don't remember if I did or not.</p> <p>23 Q. If you had asked him, would it -- would you</p> <p>24 have written down the answer?</p> <p>25 MR. JIM DARNELL: Object, calls for</p>	<p style="text-align: right;">Page 177</p> <p>1 A. I don't recall if I did or not.</p> <p>2 Q. And if Marcos had given an answer, that would</p> <p>3 have been important to write down, right?</p> <p>4 A. Yes.</p> <p>5 MR. HILKE: Okay. It's a good point for a</p> <p>6 break.</p> <p>7 MR. JIM DARNELL: Okay. Thanks.</p> <p>8 THE VIDEO TECHNICIAN: Okay. Give me just</p> <p>9 one second, guys. We are now off record. The time is</p> <p>10 2:50 p.m.</p> <p>11 (Break taken from 1:50 p.m. to 2:57 p.m.)</p> <p>12 THE VIDEO TECHNICIAN: We are back on the</p> <p>13 record for the deposition of Scott Graves being</p> <p>14 conducted by videoconference. My name is Jessica Chase.</p> <p>15 Today is July 28th, 2022, and the time is 3:57 p.m.</p> <p>16 Counsel, you may proceed.</p> <p>17 Q. (BY MR. HILKE) Okay. Good afternoon, sir. I</p> <p>18 know we've just taken a break of a little more than an</p> <p>19 hour for lunch, and am I correct that there is still no</p> <p>20 reason you couldn't give honest and truthful testimony</p> <p>21 today?</p> <p>22 A. Yeah, there's -- yeah, there is no reason that</p> <p>23 I can't do that.</p> <p>24 Q. Okay. So, sir, in -- in 1993 as a detective at</p> <p>25 CAP, did people call the police department with</p>

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1 information about open investigations?
 2 A. Yes.
 3 Q. And if someone had information about a matter
 4 that CAP was investigating, would those calls get routed
 5 to CAP?
 6 A. Yeah, they would. I think so, yeah.
 7 Q. And did you receive calls from witnesses who
 8 were calling wanting to talk about a case they knew
 9 something about?
 10 A. In general?
 11 Q. Or at -- at any -- at any time you can remember
 12 during your career in CAP.
 13 A. Yes.
 14 Q. What was -- how did those calls come to you?
 15 A. Either I was there, or when somebody called and
 16 they would call the front desk, and so they would just
 17 ship it back if it had something to do with me. If it
 18 didn't and they needed somebody, sometimes I got calls
 19 like that.
 20 Q. So -- and when you say sometimes you were
 21 there, did you sometimes just answer the phone for the
 22 general line on CAP?
 23 A. No. We had staff to do that. I answered my
 24 line.
 25 Q. Okay. And I believe your testimony earlier was

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1 that you did speak with David Rangel; that he called
 2 you. You didn't call him or try to call him; is that
 3 right?
 4 A. I think so, and I'm -- I didn't call him. I --
 5 I don't remember how the call came in. I don't know if
 6 it came in through dispatch or exactly how it came in.
 7 I'm not sure.
 8 Q. All right. Do you have any idea of how the
 9 call would have come to reach you in particular?
 10 A. Somebody would have sent it to me.
 11 Q. Yeah.
 12 And, typically, would a call about the
 13 Electric Street murders have been sent to the case agent
 14 that's on the case?
 15 A. If he was there.
 16 Q. And just to confirm, do you remember anything
 17 else about the call with David Rangel that we haven't
 18 discussed already?
 19 A. No.
 20 Q. Do you remember anything else about David
 21 Rangel at all that we haven't discussed already?
 22 A. No.
 23 Q. And I'm going to show you a couple more
 24 exhibits.
 25 So I'm now sharing my screen with you.

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1 This is going to be Exhibit Number 13.
 2 (Exhibit 13 marked.)
 3 Q. It is at --
 4 MR. JIM DARNELL: Wally, you're -- Wally,
 5 you're breaking up again.
 6 MR. HILKE: Oh, I'm sorry.
 7 Q. (BY MR. HILKE) This is Exhibit Number 13.
 8 It's at J.S. -- Villegas J.S. 0939.
 9 MR. HILKE: Are you able to hear me now?
 10 MR. JIM DARNELL: Yeah.
 11 MR. HILKE: Okay.
 12 MR. JIM DARNELL: Not great, but we can
 13 hear you.
 14 MR. HILKE: Okay. Let me know if you can't
 15 hear my questions at any time, and we'll get it solved,
 16 okay?
 17 MR. JIM DARNELL: Okay.
 18 Q. (BY MR. HILKE) So, sir, is this one of the
 19 documents you reviewed in preparation for this
 20 deposition?
 21 A. It looks like one, yes.
 22 Q. Is this the first statement that Marcos
 23 Gonzalez gave to you?
 24 A. I think so. Let me -- let me look at it here a
 25 bit closer.

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1 MR. JIM DARNELL: He's got control of it.
 2 THE WITNESS: Yeah. I'm just moving the --
 3 the screenshot of everybody over to the left, so I can
 4 see it.
 5 MR. JEEP DARNELL: Good. I'm sorry. This
 6 is going to my dad instead of to me.
 7 MR. HILKE: Yeah. I'm sorry.
 8 MR. JEEP DARNELL: Board of Nursing finally
 9 came through with the order, so we are good to go --
 10 MR. HILKE: Jeep, you're not on mute.
 11 MR. JEEP DARNELL: -- according to the
 12 patrols.
 13 MR. JIM DARNELL: Jeep.
 14 MR. JEEP DARNELL: That's fine. Cool.
 15 Thank you. Bye.
 16 MR. JIM DARNELL: I'll go tell him.
 17 MR. HILKE: Thank you.
 18 Q. (BY MR. HILKE) Sir, if -- if your lawyer has
 19 left the room for a second, I'll give him a chance to
 20 get back before we continue.
 21 We good to go?
 22 A. Yeah.
 23 Q. All right. So -- I'm sorry. So is this -- is
 24 this the first statement that you took from Marcos
 25 Gonzalez?

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1 A. It appears to be.
 2 Q. Okay. And looking in the upper right, was it
 3 your practice to mark the times that you started and
 4 completed taking a confession?
 5 A. Yes.
 6 Q. And so here, you would have started taking the
 7 confession at 12:45 a.m.; is that right?
 8 A. Yes.
 9 Q. And completed it at 1:15 a.m.?
 10 A. Yes.
 11 Q. And then was it -- was it -- I notice that each
 12 paragraph seems to be bookended by initials. Was that
 13 the department's policy to have initials on every
 14 paragraph of a confession?
 15 A. I don't know that it was policy, but it was
 16 practice.
 17 Q. Okay. And -- okay. So I'm going to stop
 18 sharing this exhibit at that poi- -- at this point.
 19 And I'm now sharing my screen again. I'll
 20 mark this Exhibit Number 14. This is at GS 1941.
 21 (Exhibit 14 marked.)
 22 Q. And scrolling to the top of the document, does
 23 this appear to be the second statement given to you by
 24 Marcos Gonzalez?
 25 A. Yes.

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1 Q. And then the time started was 2:20 a.m.; is
 2 that right?
 3 A. Yes.
 4 Q. And the time completed is 2:30-something a.m.
 5 Does that appear to be right?
 6 A. Yes.
 7 Q. And I can't make out whether that's 2:30 or
 8 something else. Can you?
 9 A. I cannot. It looks like maybe 2:35. I don't
 10 know.
 11 Q. Okay. Okay. And -- and these are both
 12 statements you reviewed to prepare for the deposition
 13 today; is that right?
 14 A. Yes, sir.
 15 Q. And other than these two statements, did you
 16 record what Marcos Gonzalez told you in any other
 17 location?
 18 A. No.
 19 Q. Okay. And we talked about some inconsistencies
 20 between Marcos's statement and Rodney Williams's
 21 statement. Can you think of any reason why you would
 22 not have questioned Marcos about consistencies
 23 between -- inconsistencies between his and Rodney's
 24 statements?
 25 A. I -- no, I can't.

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1 Q. And we've -- other than what you've discussed
 2 already about your interactions with Marcos, do you have
 3 an independent memory of anything else about your
 4 invest- -- your interactions with Marcos Gonzalez?
 5 A. No.
 6 Q. And as you reviewed these statements in
 7 preparation for the deposition, did they refresh your
 8 memory about any interactions with Marcos Gonzalez that
 9 we have not talked about yet today?
 10 A. No.
 11 Q. I'm going to stop sharing this now.
 12 After -- at the time you spoke to Marcos,
 13 you didn't know that Droopy and Popeye could not have
 14 been in the -- in the car; is that right?
 15 A. No.
 16 Q. Do you remember how long thereafter you learned
 17 that fact?
 18 A. I think it was a long time, like years.
 19 Q. Would it have been during Danny's criminal
 20 trials?
 21 A. I don't even think it was then. I think it was
 22 much, much later, like when the whole -- that the
 23 evidentiary stuff and things were -- would even -- I'm
 24 not even sure when the time was, but I'm thinking it was
 25 like later, much, much later than after the trials.

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1 Q. Your recollection is that that information came
 2 to you after -- you know, during Daniel's postconviction
 3 proceedings many years later; is that fair?
 4 A. I believe so, yes.
 5 Q. Okay. And do you remember if you were still
 6 employed by the El Paso Police Department when you
 7 learned that information?
 8 A. I don't think I was.
 9 Q. Other than what we've discussed today, do you
 10 have a recollection of participating in the Electric
 11 Street murders investigation in any way before you went
 12 to Daniel Villegas's house?
 13 A. Like on the 12th, I took statements, I think,
 14 that Monday.
 15 Q. And we talked about a few of those statements,
 16 like Cynthia and Eduardo Valles, right?
 17 A. Right.
 18 Q. We talked about Terri Vinson and Terrance
 19 Farrar, Cynthia, and Eduardo Valles, right?
 20 A. Yes.
 21 Q. Other than the people we discussed, do you
 22 remember investigating anyone else as part of the
 23 Electric Street murders investigation?
 24 A. Not off the top of my head, I don't remember.
 25 Q. Do you have any memory of any -- any other

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1 investigation whatsoever you did in the Electric Street
 2 murders that we haven't discussed today or that isn't
 3 recorded in one of the documents you've reviewed?
 4 A. I don't believe so.
 5 Q. Okay. So I'm going to -- I'm going to mark
 6 this Exhibit 15. This is at City 920.
 7 (Exhibit 15 marked.)
 8 Q. Let me zoom in a little bit.
 9 Do you recognize this as your disciplinary
 10 history card?
 11 A. Yeah. It -- it looks a lot different than the
 12 last time I saw it, but yeah.
 13 Q. You've seen a version of this before, although
 14 not necessarily this version; is that fair?
 15 A. Yes.
 16 Q. And this is documenting the sustained
 17 disciplinary allegations against you; is that correct?
 18 A. Yes.
 19 Q. The first one from July 24, 1985, I believe is
 20 about an interaction with a railroad police that -- at a
 21 relative's house. Do you remember that incident?
 22 A. I do, yeah.
 23 Q. And that would have been one of the first
 24 internal affairs investigations that involved you; is
 25 that right?

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1 A. Yes.
 2 Q. And you were a pretty new officer at the time.
 3 A. Yes.
 4 Q. Do you remember how that investigation
 5 resolved?
 6 A. I don't remember. I -- I really don't. I
 7 think on that one I got in trouble because I asked him
 8 if he had a search warrant, and that's essentially
 9 what -- what got me in trouble.
 10 Q. I see.
 11 And the railroad police, they thought you
 12 were interfering in their investigation; is that fair?
 13 A. Yes.
 14 Q. And you thought you were just trying to protect
 15 the ri- -- you were trying to look out for the persons
 16 whose house it was; is that fair?
 17 A. Yes, that is fair.
 18 Q. And did -- did it leave an impression on you,
 19 this investigation, in terms of needing to be careful
 20 about your interactions?
 21 A. Well, I just minded my own business after that.
 22 I mean, that was pretty much what it did to me. I just
 23 said I'm going to just keep myself in my own lane.
 24 That's it.
 25 Q. Yeah.

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1 The next one is CP86-131, and I believe
 2 that's the only time you've ever received a suspension.
 3 Is that right?
 4 A. Yes, sir.
 5 Q. And that was an incident at Whataburger, if I'm
 6 not -- right. Does that ring a bell?
 7 A. Yes. Yeah.
 8 Q. And there were a bunch of officers involved in
 9 this investigation, right?
 10 A. Yes.
 11 Q. And did -- if I remember correctly, internal
 12 affairs' conclusion was that an inappropriate practical
 13 joke had been played. Is that what they -- you remember
 14 them concluding?
 15 A. Yes. And I -- I think the essence of that was
 16 one of the guys made a -- probably an inappropriate
 17 comment when he was leaving out of Whataburger about
 18 calling the police on the -- on the drunk guy and
 19 that -- that was basically it.
 20 Q. Yeah.
 21 Did -- and this is -- you didn't make that
 22 comment, did you?
 23 A. No.
 24 Q. You didn't participate in an inappropriate
 25 practical joke in any way, did you?

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1 A. No.
 2 Q. Do you remember feeling that it was unfair to
 3 get suspended for something you didn't play a role in?
 4 A. You know, I didn't like it, but I was there.
 5 It was technically my duty to go arrest the gentleman on
 6 the -- in -- that was drunk in the bathroom. I didn't
 7 do it, so I took my -- my punishment.
 8 Q. Okay. Was it -- was it a learning experience
 9 going through this internal affairs complaint?
 10 A. Definitely, yes.
 11 Q. And this is another one -- this is in the first
 12 couple of years that you entered service; is that right?
 13 A. Yes.
 14 Q. And then a few months later, there is a
 15 complaint for dereliction of duty, failure to obey a
 16 order. That's CP86-228. My recollection is that the
 17 allegation was being ordered to write a traffic ticket
 18 and not doing it or not doing it quickly -- quickly
 19 enough or something. Does that ring a bell?
 20 A. It does.
 21 Q. And you ultimately received a written reprimand
 22 in that investigation; is that right?
 23 A. Yes.
 24 Q. And was that -- was this also a learning
 25 experience for you?

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1 A. Yes, it -- it was. And I still disagree with
2 that to this day, and the reason -- the reason I do is
3 because the man that he wanted me to cite was a very
4 poor man who could not afford the traffic ticket that he
5 had the warrant for, and he was barely able to post bond
6 on that ticket, and I felt like he should have a chance
7 to go rectify what the problem was with his vehicle,
8 which I believe was insurance, and -- before we wrote
9 him another ticket and put him in the same spot.

10 And so that was just me disagreeing about
11 the -- really, essentially, I wanted to be compassionate
12 rather than just slam him again and then see him with a
13 warrant, when he was obviously trying to do -- he was
14 trying to take care of the family and trying to do the
15 right thing, and he was trying to do that. So he and I
16 disagreed, and I took my written reprimand and -- and
17 that was that.

18 Q. And -- and you -- you -- you agreed that it was
19 a learning experience. Was it an experience that stuck
20 with you as you were figuring out how to navigate your
21 career in the police department?

22 A. It -- it was. I did -- did not feel guilty
23 about showing compassion to that gentleman, and I did
24 other compassionate acts in the future, regardless of
25 whether that -- that put me at peril for discipline or

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1 not.

2 Q. Yeah. So I'll stop sharing this now.

3 And you've had the opportunity to testify
4 in court numerous times as a police officer; is that
5 right?

6 A. Yes.

7 Q. And you swear an oath when you testify in
8 court, right?

9 A. I -- I did what?

10 Q. You swear an oath to tell the truth when you
11 testify in court, right?

12 A. Yes, sir.

13 Q. And you're under that same kind of oath right
14 now in this deposition, right?

15 A. Yes, sir.

16 Q. And when you take that oath, you're swearing
17 that everything you say is true, right?

18 A. Yes, sir.

19 Q. And is that an oath that you take seriously
20 when you swear it?

21 A. Yes.

22 Q. And the integrity of the justice system depends
23 on officers taking that oath seriously when they swear
24 it, right?

25 A. Yes.

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1 Q. And today, you don't recall a time when you
2 testified falsely under oath, do you?

3 A. No.

4 Q. And you testified at Daniel Villegas's first
5 criminal trial, right?

6 A. I believe so, yes, sir.

7 Q. And you were under oath when you testified in
8 court, right?

9 A. Yes, sir.

10 Q. And Daniel Villegas's first trial -- actually,
11 give me one moment.

12 A. It was what?

13 Q. I'm -- I'm sorry. I'm just -- I just need a
14 second.

15 A. Oh, okay.

16 Q. Does it sound about right that his first trial
17 was in 1994?

18 A. I -- I think that's accurate.

19 Q. Do you recall being asked whether any
20 complaints against you had ever been substantiated at
21 that first trial?

22 A. No.

23 Q. Do you recall being asked these questions and
24 giving these answers:

25 "Question: Can you give the ladies and

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1 gentlemen of the jury roughly an estimate of the
2 complaints?

3 "Answer: Four or five.

4 "Question: A few?

5 "Answer: Just a few. It's not very many.

6 "Question: Any of them substantiated?

7 "Answered -- answer: No."

8 Do you recall giving that testimony?

9 A. I think so, and how I perceived what they were
10 asking was public complaints, like complaints from
11 citizens about misconduct and -- and that's what I was
12 thinking at the time. I wasn't thinking internal
13 complaints. So that -- that wasn't an intent to deceive
14 anybody.

15 Q. All right. So -- so I'm going to -- I'm going
16 to share an exhibit with you. This is Exhibit 16,
17 starting at Villegas J.S. 641.

18 (Exhibit 16 marked.)

19 Q. And on J.S. 653, do you see the date here
20 December 9, 1994?

21 A. Yes.

22 Q. And scrolling down, it has -- lists you, Scott
23 Graves, as a witness and being sworn in by the Court; is
24 that right?

25 A. Yes.

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1 Q. And did you review this testimony in
2 preparation for your deposition today?
3 A. I believe I did.
4 Q. So -- so I am scrolling down to J.S. 674, and
5 do you see starting on line 8, being asked the question,
6 "How many complaints have been filed against you with
7 internal affairs?
8 "Answer: I don't know. I haven't had one
9 since I've been a patrolman?"
10 A. Yes.
11 Q. And scrolling down to line 17, there's a
12 question, "How many have you had total in your career?"
13 "Answer: I don't know, but it's few.
14 "Question: But you agree you would have
15 them?
16 "Answer: I have had a couple."
17 Do you see that?
18 A. Yes.
19 Q. And then scrolling down -- scrolling down
20 further, J.S. 693, starting on line 10, do you see where
21 you're asked, "Question: Now, in regards to complaints
22 that have" -- I'm sorry. Strike that.
23 Line 10, "Question: Now, in regards to
24 complaints have been filed as a police officer --
25 "Answer: Yes.

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1 "Question: Ten years as a police officer,
2 you would say?
3 "Answer: Yes.
4 "Question: Lots of arrests?
5 "Answer: Lots of arrests.
6 "Question: All sorts of crimes?
7 "Answer: Yes.
8 "Can you -- Question: Can you give the
9 ladies and gentlemen of the jury roughly an estimate of
10 the complaints?
11 "Answer: Four or five.
12 "Question: A few?
13 "Answer: Just a few. It's not very many.
14 "Question: Any of them substantiated?
15 "Answer: No."
16 Do you see that portion of the transcript?
17 A. I do.
18 Q. So did either of the attorneys asking you
19 questions limit in any way what kinds of complaints they
20 were asking you about?
21 A. I -- I think it's implied in the previous
22 questions about the arrests and about the
23 investigations, and so forth, and, you know, in my mind,
24 I -- I did separate stuff like those things that I got
25 complained on internally versus citizen complaints, you

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1 know. I did not have but just a handful of citizen
2 complaints, and none of them were ever substantiated.
3 And that is what I was thinking of, and that's what I
4 was referring to.
5 Q. I'm going to stop sharing now.
6 A. I -- I could have been more exact.
7 Q. The -- the railroad police, were they internal
8 to the El Paso Police Department?
9 A. No, but I viewed that in that same category.
10 Q. Why did you view that in the same category?
11 A. Because I didn't see it as the same sort of
12 thing a citizen complaint would be.
13 Q. And you also testified that you hadn't gotten
14 any complaints since you became a detective; is that
15 right?
16 A. I don't believe I did.
17 Q. You don't believe that that was your testimony,
18 or you don't believe that you had any complaints?
19 A. I don't believe that I had any complaints. I
20 don't think I did.
21 Q. And if you had been named in internal affairs
22 complaints in, say, the previous two years, you would
23 have remembered that when giving your testimony, right?
24 MR. JIM DARNELL: Object, calls for
25 speculation.

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1 Q. (BY MR. HILKE) Go ahead.
2 A. Okay. So, again, if I would have been
3 complained on by a citizen and -- you know, through
4 per- -- the performance of my duties, and somebody said
5 that I beat them up, or whatever, and that was
6 substantiated, I would have told them about that, and
7 that is where my mind was. I was not thinking of those
8 internal complaints.
9 Q. And you weren't just asked about -- okay.
10 Right. So the way you understood the question, you
11 weren't thinking about internal complaints; is that
12 fair?
13 A. I -- the way I perceived the question was that
14 I was being asked about my conduct as a police officer
15 towards citizens in the community.
16 Q. Okay. So you would have -- so if a citizen had
17 complained against you while you were a detective, you
18 would have mentioned that in your testimony, right?
19 A. It -- I think the question was, was it
20 substantiated. And -- and I -- I couldn't remember
21 getting any comp- -- substantiated complaints from
22 citizens.
23 Q. I'm pulling Exhibit 16 back up again, and I'm
24 on page J.S. 674. Do you see on line 8 where Mr. Olivas
25 asks, "How many complaints have been filed against you

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1 with internal affairs?"

2 And you answered, "I don't know. I haven't

3 had one since I've been a patrolman?"

4 A. Yes.

5 Q. And Mr. Olivas there was asking you about any

6 complaints, not just substantiated complaints, correct?

7 A. Yeah, I believe so. I -- I think that's what

8 he -- I don't know what he was thinking. I just know

9 how I perceived the question.

10 Q. And you perceived his question about how many

11 internal affairs complaints were filed against you to

12 just be external complaints, right?

13 A. Yes.

14 Q. And you also -- and to this question, how many

15 complaints have been filed against you, you understood

16 him to be asking about how many total complaints, not

17 just substantiated complaints, right?

18 A. Did I -- are -- are you asking me did I -- what

19 are you asking me exactly?

20 Q. I'm asking if you understood him to be asking

21 you about all ex- -- like external internal affairs

22 complaints or just the substantiated ones.

23 A. I think all of them.

24 Q. And your answer to him was that you haven't had

25 one since you've been a patrolman, right?

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1 A. Yeah. That -- that was what Mr. -- yeah.

2 Q. And so if you had been the subject of a

3 civilian complaint since becoming a detective, that

4 answer would be false, right?

5 A. I believe so. Or -- either that or I didn't

6 remember, one of the two.

7 Q. I'll stop sharing that now.

8 Other than -- over your career, you did

9 receive multiple civilian complaints, right?

10 A. Multiple what?

11 Q. Civilian complaints.

12 A. I -- I received civilian complaints, but I -- I

13 don't remember all of them, but I answered them all, and

14 I did what I was supposed to do.

15 Q. And other than arguably the railroad police

16 complaint, you've never been disciplined for a civilian

17 complaint, have you?

18 A. No.

19 Q. And I'm going to show you a couple more

20 exhibits now.

21 So I'm now sharing Exhibit 17. This is at

22 City 57459.

23 (Exhibit 17 marked.)

24 Q. Do you see this is a statement given by you to

25 a Sergeant Carney?

Page 200

1 A. Yes.

2 Q. And this is on a multipurpose sworn supplement

3 report, right?

4 A. Yes.

5 Q. And it's an administrative offense CP86-131?

6 A. Yes.

7 Q. Okay. Is this the kind of statement that you

8 would provide as the subject of an internal affairs

9 investigation?

10 A. Yes.

11 Q. I'm going to scroll down to the next page,

12 which is City 57460. Do you note -- so by looking at

13 the beginning of the paragraph at the top of this page,

14 do you read, "It should be noted that among station

15 members, it is a well-known fact that DeAngelis and

16 Gailey possess a great amount of dislike for each other.

17 It is just my opinion that DeAngelis assumed that Gailey

18 had made a remark, when, in fact, he didn't, due to the

19 longstanding feud between the two"?

20 Do you see that statement?

21 A. Yes.

22 Q. So part of what you added at the end of your

23 statement -- and -- well, strike that.

24 DeAngelis was the officer who internal

25 affairs perceived as the victim of the practical joke,

Page 201

1 right?

2 A. Probably.

3 Q. Okay. And here, you're sort of saying this

4 wouldn't have happened except the supposed victim of the

5 practical joke had so much dislike for one of the

6 officers involved; is that fair?

7 A. Yeah. I think they didn't care for each other.

8 Q. So I'm going to stop sharing that and share one

9 other.

10 Okay. This is Exhibit 18, Bates

11 City 57463.

12 (Exhibit 18 marked.)

13 Q. This is a statement by Officer Art Perez; is

14 that right?

15 A. Yes.

16 Q. And same internal affairs case number,

17 CP86-131?

18 A. Yeah.

19 Q. I'm scrolling way down in the document to the

20 final page, City 57467.

21 Do you see at the end of the statement

22 where Officer Perez writes, "It's a known fact that

23 Officer DeAngelis and Gailey do not get along, and I

24 feel that this incident went -- went as far as it did

25 because Officer Gailey was one of the officers

Page 202

1 involved."

2 A. Yeah.

3 Q. And so in your statement -- Perez is saying

4 almost exactly the same thing you were about why he

5 thinks what happened, right?

6 A. Yes.

7 Q. And that's something -- it's similar enough

8 that you might have discussed it beforehand, right?

9 A. I think that was actually a question that we

10 were answering from Carney.

11 Q. But that's something you would have expected

12 Carney to ask all the officers involved.

13 A. I don't know if he asked all the officers

14 involved.

15 Q. Uh-huh.

16 A. But he probably asked Art and I for sure.

17 Q. And so your explanation for why you both said

18 the same thing was -- would be that the sergeant

19 probably asked the same question to both of you, right?

20 A. Or whoever took the statements.

21 Q. And that's because it wouldn't have been

22 appropriate for both of you to -- to coordinate what

23 statements you were going to give beforehand; is that

24 right?

25 A. I don't remember coordinating with anybody on

Page 203

1 that.

2 Q. Would it have been appropriate to do so?

3 A. I don't know if it would have been appropriate

4 or not. I just know I didn't.

5 Q. I understand.

6 It wasn't -- it wasn't that there was a

7 policy about whether or not you could coordinate

8 beforehand; is that right?

9 A. Or ask each other questions. I -- you know, I

10 don't know the policy that said you can't -- you can't

11 talk to somebody. The minute they tell you you can't

12 talk to somebody, then you can't.

13 Q. Okay. I'll stop sharing this exhibit now.

14 Are you aware in your career of any

15 instance where internal affairs punished officers for

16 coordinating their statements?

17 A. No.

18 Q. To your knowledge, did the El Paso Police

19 Department ever investigate any misconduct related to

20 the Electric Street shootings?

21 A. I don't know.

22 Q. Sitting here today, are you aware of any such

23 investigation?

24 A. No.

25 Q. To your knowledge, did the El Paso Police

Page 204

1 Department ever investigate failures by officers to

2 follow policies regarding juveniles?

3 A. I don't know.

4 Q. You're not aware of any sitting here today?

5 A. Not that I can think of.

6 Q. Okay. To your knowledge, did the El Paso

7 Police Department ever investigate how three people gave

8 the same false confession as to two people being in the

9 car involved in a murder?

10 A. Did the department investigate it?

11 Q. Yes, sir.

12 A. I don't know.

13 Q. You're not aware of any such investigation

14 sitting here today?

15 A. No.

16 Q. Sitting here today, are you aware of any

17 physical evidence that corroborates Daniel Villegas

18 being the shooter in the Electric Street murders?

19 A. Not offhand.

20 Q. Are you aware of any murder weapon that was

21 ever tied to him?

22 A. No.

23 Q. Or any vehicle that was ever tied to him?

24 A. No.

25 Q. Or to any of the people who gave statements in

Page 205

1 the -- in this investigation?

2 A. What was that question again?

3 Q. Are you aware of a murder weapon or a vehicle

4 tied to any of the people who made statements in this

5 investigation?

6 A. No, I'm not.

7 Q. Are you aware of any forensic evidence tying

8 Daniel Villegas to the investigation?

9 A. I'm not aware.

10 Q. I should say "to the shootings." Any forensic

11 evidence tying Daniel Villegas to the shootings?

12 A. I'm not -- no.

13 Q. Are you aware of anything, other than the

14 statements, that tie Daniel Villegas to the shootings?

15 A. No.

16 Q. Sitting here today, do you believe that more

17 investigation should have been done into the Electric

18 Street murders?

19 A. Probably.

20 Q. Do you believe that the statements that were

21 given should have been examined more closely?

22 A. In retrospect -- retrospect, that's probably

23 true.

24 Q. Do you believe that other suspects should have

25 been investigated further in the shooting?

Page 206

1 A. I think that that's probably true, too.

2 Q. Sitting here today, do you have doubts that

3 Daniel Villegas was the shooter of the Electric Street

4 shootings?

5 A. It's a -- that's a difficult question. At the

6 time, I -- I really thought he did it, but he has since

7 been found not guilty, and I accept that judgment.

8 Q. Sure.

9 So if it were up to you, would Daniel

10 Villegas still be in prison today?

11 A. It isn't up to me.

12 Q. I understand that, but if it were.

13 A. I'm not sure how to answer that question.

14 Q. Do you have any opinion today about whether

15 Daniel Villegas should still be in prison?

16 A. Do I have any what?

17 Q. Opinion today about whether Daniel Villegas

18 should still be in prison.

19 A. No.

20 Q. If you did this investigation again, would you

21 have done anything differently?

22 A. Through -- through the lens of 29 years and

23 hearing all the things that I've heard since then and

24 all the -- the hearings, yeah.

25 Q. I have a few other questions, and for context,

Page 207

1 the reason I'm asking them to you is to -- that they may

2 relate to punitive damages at trial. Because these are

3 a little different than my other questions.

4 You are currently working today; is that

5 right?

6 A. That is true, yes, sir.

7 Q. Approximately what is your income?

8 A. From my job?

9 Q. Yes, sir.

10 A. It's -- I want to say -- they probably don't

11 pay as close attention as I should to it. It's like

12 3800 a month.

13 Q. And what other -- do you receive a police

14 pension?

15 A. I do.

16 Q. What is your pension?

17 A. It's roughly 70,000.

18 Q. Did you say "70,000," seven-zero?

19 A. Yes, sir.

20 Q. Do you currently have any other sources of

21 income?

22 A. I have a VA, Veterans Administration,

23 disability.

24 Q. Okay. And what is your income from that

25 source?

Page 208

1 A. I would say it's like \$1500 a month, something

2 like that.

3 Q. And do you have any other sources of income?

4 A. My wife.

5 Q. What does your wife do for work?

6 A. She's a social worker.

7 Q. Do you own any property?

8 A. I own my home. I don't own it outright, but

9 I'm paying a mortgage on it.

10 Q. Okay. Approximately what is the equity in your

11 home right now?

12 A. Well, the equity is probably -- I just bought

13 the home probably a year and a half ago, so the equity

14 is probably about -- if there's any real equity, maybe

15 5,000 bucks.

16 Q. Do you own any vehicles?

17 A. I do.

18 Q. How many?

19 A. I own one, and my wife owns the other, and

20 we're both on the titles for -- for both vehicles.

21 Q. Do you have any loans on either of them?

22 A. No, sir.

23 Q. And what are the makes and models?

24 A. A 2015 Ford F-150 and then a 2018 Jeep Grand

25 Cherokee.

Page 209

1 Q. Do you own any stocks or bonds?

2 A. I think the answer to that would be yes because

3 I have two 403(b) accounts, and those are invested, so I

4 guess that would be indirect. I don't know how you

5 classify that, but --

6 Q. Yeah.

7 What's approximately the value in those

8 accounts?

9 A. They're -- I have -- honestly, I haven't looked

10 since the inflation thing and the market took a hit, but

11 prior to that, they were about 40,000 each. So I'd

12 say -- and being optimistic -- maybe 80- to a hundred

13 thousand, and I haven't taken a look. I haven't wanted

14 to since the market has crashed.

15 Q. Yeah.

16 About how much do you have in any checking

17 accounts?

18 A. In my checking account, I probably have about

19 35-, 36,000. And in my savings account, probably

20 50,000.

21 Q. Do you have any collections, guns, any -- any


22 other assets worth more than \$5,000?

23 A. No.

24 Q. And do you have --

25 A. I do own a few guns. I do own a few guns. I

<p style="text-align: right;">Page 210</p> <p>1 want to make that clear. I have a few, but I don't</p> <p>2 think they're -- I'd be surprised if it's in excess of</p> <p>3 five grand.</p> <p>4 Q. Sure.</p> <p>5 Do you have any -- any assets that we --</p> <p>6 any -- any assets over \$5,000, including other property</p> <p>7 that I haven't asked you about?</p> <p>8 A. No. I don't have any other property. Just the</p> <p>9 property that my house is on. And that's it. I</p> <p>10 don't -- I don't have any other property from there.</p> <p>11 Q. And do you -- do you have any dependents,</p> <p>12 any -- any children who you support currently?</p> <p>13 A. My children are all grown, and they're --</p> <p>14 they're on their own. The only other new dependent that</p> <p>15 I have is my mother-in-law. Because my father-in-law</p> <p>16 just died a few weeks ago, probably a month ago, I</p> <p>17 guess, and we've been taking care of her for -- she's</p> <p>18 been in our house for probably five months.</p> <p>19 Q. I'm -- I'm sorry for your loss.</p> <p>20 A. Thank you.</p> <p>21 Q. Do you have any credit card debt?</p> <p>22 A. No.</p> <p>23 Q. Any other debts or liabilities that we haven't</p> <p>24 discussed?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">Page 212</p> <p>1 MR. JIM DARNELL: This is Jim Darnell. We</p> <p>2 reserve our questions.</p> <p>3 MR. BRITTAIN: Eric Brittain for Kimmett</p> <p>4 Bellows. We'll reserve as well.</p> <p>5 THE REPORTER: Before we go off the record,</p> <p>6 I need to get orders.</p> <p>7 Mr. Hilke, what format do you want your</p> <p>8 deposition transcript in?</p> <p>9 MR. HILKE: You know, I'm pretty sure we</p> <p>10 will order, but I'm going to double-check first, please.</p> <p>11 THE REPORTER: Okay.</p> <p>12 MR. HILKE: Thank you.</p> <p>13 THE REPORTER: And -- thank you.</p> <p>14 And then, Mr. Darnell, do you want a copy</p> <p>15 of the transcript?</p> <p>16 MR. JIM DARNELL: What is our new plan for</p> <p>17 how we're doing this?</p> <p>18 MR. TSCHIRHART: I'm not exactly clear on</p> <p>19 what it is, Jim, at this time.</p> <p>20 MR. JIM DARNELL: Do you know, Eric?</p> <p>21 MR. BRITTAIN: I think, for this case, that</p> <p>22 we let Scott, the city, get them, because they've</p> <p>23 already got them set up through the vendor, and that's</p> <p>24 the best way, in my opinion.</p> <p>25 MR. JEEP DARNELL: That was what the emails</p>
<p style="text-align: right;">Page 211</p> <p>1 MR. HILKE: Okay. Well, I'm about done,</p> <p>2 but I'd like to take five minutes and check my notes</p> <p>3 before I wrap up.</p> <p>4 MR. JIM DARNELL: Okay.</p> <p>5 THE VIDEO TECHNICIAN: Would you like to go</p> <p>6 off record?</p> <p>7 MR. HILKE: Yes, please.</p> <p>8 THE VIDEO TECHNICIAN: Okay. We are now</p> <p>9 off record, and the time is 4:50.</p> <p>10 (Break taken from 3:50 p.m. to 3:56 p.m.)</p> <p>11 THE VIDEO TECHNICIAN: We are back on the</p> <p>12 record for the deposition of Scott Graves being</p> <p>13 conducted by videoconference. My name is Jessica Chase.</p> <p>14 Today is July 28th, 2022, and the time is 4:56 p.m.</p> <p>15 Counsel, you may proceed.</p> <p>16 MR. HILKE: I don't have any more questions</p> <p>17 for you right now. Thank you for your time today.</p> <p>18 THE WITNESS: Okay. Thank you.</p> <p>19 MR. ALMANZAN: This is Andy Almanzan for</p> <p>20 Carlos Ortega. We'll reserve our questions for this</p> <p>21 witness until the time of trial.</p> <p>22 MR. TSCHIRHART: I don't have any questions</p> <p>23 at this time.</p> <p>24 MR. MARTINEZ: This is Jim Martinez. I</p> <p>25 reserve my questions.</p>	<p style="text-align: right;">Page 213</p> <p>1 said was that we were supposed to let the attorneys for</p> <p>2 the city order everything.</p> <p>3 THE REPORTER: Okay.</p> <p>4 MR. JIM DARNELL: The -- the emails got</p> <p>5 awfully confusing, but that -- that makes the most</p> <p>6 sense.</p> <p>7 MR. BRITTAIN: Yeah. I think --</p> <p>8 THE REPORTER: Okay.</p> <p>9 MR. BRITTAIN: I think the rule is, if the</p> <p>10 city's in it, then the city gets them. If not, then the</p> <p>11 individual attorney representing that particular officer</p> <p>12 gets them. So for these, we're good with Scott getting</p> <p>13 them.</p> <p>14 THE REPORTER: Okay. So what format do you</p> <p>15 want your deposition in, Mr. Tschirhart?</p> <p>16 MR. TSCHIRHART: Please contact my office</p> <p>17 and talk to Christy Burke.</p> <p>18 THE REPORTER: Okay. And then are you</p> <p>19 going to want --</p> <p>20 MR. TSCHIRHART: She's on the emails.</p> <p>21 THE REPORTER: Are you going to --</p> <p>22 MR. TSCHIRHART: She's on the emails.</p> <p>23 THE REPORTER: Okay. And then would you</p> <p>24 like video as well?</p> <p>25 MR. TSCHIRHART: Please contact my office.</p>

<p style="text-align: right;">Page 214</p> <p>1 THE REPORTER: Okay.</p> <p>2 MR. TSCHIRHART: Christy Burke.</p> <p>3 THE REPORTER: Okay. And then read and</p> <p>4 sign, Mr. Darnell?</p> <p>5 MR. JIM DARNELL: Yes, absolutely.</p> <p>6 THE REPORTER: All right. That is my</p> <p>7 information for this.</p> <p>8 THE VIDEO TECHNICIAN: If that's</p> <p>9 everything, then let me go ahead and get us off record</p> <p>10 here. We are concluding. That concludes the deposition</p> <p>11 of Scott Graves. The time is 4:59 p.m.</p> <p>12 (Deposition concluded at 3:59 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 216</p> <p>1 CORRECTIONS AND SIGNATURE</p> <p>2 WITNESS: SCOTT GRAVES DATE: JULY 28, 2022</p> <p>3 PAGE LINE CORRECTION REASON</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
<p style="text-align: right;">Page 215</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 STATE OF TEXAS)</p> <p>4 COUNTY OF EL PASO)</p> <p>5</p> <p>6</p> <p>7</p> <p>8 I, Ginger G. Zachary, Registered Professional</p> <p>9 Reporter, Certified Realtime Reporter, and Certified</p> <p>10 Shorthand Reporter in and for the State of Texas, hereby</p> <p>11 Certify that this transcript is a true record of the</p> <p>12 said proceedings, and that said transcription is done to</p> <p>13 the best of my ability.</p> <p>14 Given under my hand and seal of office on</p> <p>15 August 4, 2022.</p> <p>16</p> <p>17 </p> <p>18 _____</p> <p>19 Ginger G. Zachary, CSR, RPR, CRR</p> <p>20 Texas Certification Number 5710</p> <p>21 Date of Expiration: 1/31/2024</p> <p>22 KENTUCKIANA COURT REPORTERS</p> <p>23 730 West Main Street, Suite 101</p> <p>24 Louisville, Kentucky 40202</p> <p>25 Ph.: 502.589.2273</p>	<p style="text-align: right;">Page 217</p> <p>1 I, SCOTT GRAVES, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 SCOTT GRAVES</p> <p>7 THE STATE OF TEXAS)</p> <p>8 COUNTY OF EL PASO)</p> <p>9</p> <p>10 Before me, _____, on this</p> <p>11 day personally appeared SCOTT GRAVES known to me (or</p> <p>12 proved to me under oath or through _____)</p> <p>13 (description of identity card or other document) to be</p> <p>14 the person whose name is subscribed to the foregoing</p> <p>15 instrument and acknowledged to me that they executed the</p> <p>16 same for the purposes and consideration therein</p> <p>17 expressed.</p> <p>18 Given under my hand and seal of office this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC IN AND FOR</p> <p>23 THE STATE OF TEXAS</p> <p>24 My commission expires: _____</p> <p>25</p>

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ATTACHMENT 2-D

EL PASO POLICE DEPARTMENT
SUPPLEMENT REPORT

H3

Reported Date: 04/10/93 Time: 19:05 Case: 93-100037 Page:*1
 Code: DU AD Crime: DEATH UNATTEN Class: 010101 *
 Occurrence Date: 04/10/93- Day: SATURDAY - Time: 00:15-
 Status: Clearance: Closing Officer:
 Location: 10000 ELECTRIC AV., EP RD: 64
 DITCH AREA EAST O/ROAD /MURDER

===== NARRATIVE =====

OFFENSE:Capital Murder
 COMPLAINANT NAME: Robert England
 ADDRESS: Deceased

SUPPLEMENT DATE: 4/22/93
 SUPPLEMENT TIME: 7:15 AM
 OPERATOR'S ID#: 314

Undersigned upon reviewing this case requested that Rodney Williams be brought to the Youth Services Division for additional information. It was determined that Williams was indeed in the car, when the shooting occurred. It was learned from Williams that there were no other persons involved in the shooting but refused to give any other details. Statements support Williams involvement in this case, through positive identification by witness who observed Williams with the other parties involved. Williams had been advised of his rights by undersigned and signed a Juvenile Warning but refused to give a statement. Based on information and investigation undersigned felt enough probable cause existed to charge William with the offense. Williams was turned over to Juvenile Probation Department along with up to date copy of the case.

INVESTIGATION CONTINUES...

TO: [REDACTED] ONLY
 CERTAINLY [REDACTED] SUBJECT TO
 NONDISCLOSURE ACT (252-17a V.A.C.S.)
 DATE: BY: TO:

===== Standard Trailer 1 - First Page =====

Reporting Officer: MARQUEZ
 Typed by: 314
 Approving Officer: MARQUEZ

0000442
 Number: 000314 Date: 04/10/93 Time: 19:05
 Number: 314 Date: 04/22/93 Time: 07:10
 Number: 000314 Date: 04/22/93 Time: 07:23

EL PASO POLICE DEPARTMENT
SUPPLEMENT REPORT

H3

Reported Date: 04/10/93 Time: 19:05 Case: 93-100037 Page: *1
 Code: DU AD Crime: DEATH UNATTEN Class: 010101 *
 Occurrence Date: 04/10/93- Day: SATURDAY - Time: 00:15-
 Status: Clearance: A Closing Officer: C00048 MACIAS
 Location: 10000 ELECTRIC AV., EP RD: 64
 DITCH AREA EAST O/ROAD /MURDER

===== NARRATIVE =====
 TIME: 10:10 AM OFFENSE: CAPITAL MURDER
 DATE: 5/5/93 COMPLAINANT NAME: ROBERT ENGLAND
 PAGE: 1 ADDRESS: DECEASED

PRESENTATION SUPPLEMENT

SUBJECT: MARCOS GONZALEZ
 AGE: 17 DOB: 1/1/76
 ADDRESS: 5700 WREN
 CHARGE: CAPITAL MURDER
 WARRANT #: M93-04968 JUDGE: MC-2B
 DATE ISSUED: 4/22/93 BOND: 100,000.
 POA: 5700 WREN
 DOA: 4/22/93
 BOOKING #: 310141 EPPD: 269362
 RAP SHEET: NONE
 HISTORY SHEET: NONE
 NCIC: NONE DATE: #:
 IN CUSTODY: (X) YES () NO
 EVIDENCE: NONE

SUBJECT: DANIEL VILLEGAS (JUVENILE)
 AGE: 15
 ADDRESS: 5700 WREN
 CHARGE: CAPITAL MURDER
 IN CUSTODY: YES

SUBJECT: RODNEY LEROY WILLIAMS (JUVENILE)
 AGE: 15
 ADDRESS: 5700 WREN
 CHARGE: CAPITAL MURDER
 IN CUSTODY: YES

TO LAW ENFORCEMENT AGENCY ONLY
 CERTAIN ELEMENTS OF THIS CASE ARE SUBJECT TO
 NONDISCLOSURE IN ACCORDANCE WITH THE TEXAS
 OPEN RECORDS ACT (0362-17a V.A.C.S.)
 DATE: BY: TO:

THIS CASE IS BEING PRESENTED TO THE COUNTY/DISTRICT ATTORNEY FOR DISPOSITION.

THIS CASE ALONG WITH A COPY OF THE CASE #93-100039 WILL BE PRESENTED TO BOTH
 THE COUNTY AND DISTRICT ATTORNEYS OFFICE AS IT INVOLVES TWO JUVENILES AND ONE
 ADULT.

IT SHOULD BE NOTED THAT THE MASTER CASE WILL BE 93-100037 WITH THE COMPLAINANT
 BEING ROBERT ENGLAND.

THIS CASE IS BEING CARRIED BY THIS OFFICE AS CLEARED BY ARREST.

CLEARED BY ARREST....

Standard Trailer 1 - First Page

Reporting Officer: MARQUEZ
 Typed by: 314
 Approving Officer: MARQUEZ

0000461
 Number: 000314 Date: 04/10/93 Time: 19:05
 Number: 314 Date: 05/05/93 Time: 10:09
 Number: 000314 Date: 05/05/93 Time: 10:26

VILLEGAS J.S. 030407

Statement of: Rodolfo Flores

Case No: 93-100037

**
**
**EL PASO POLICE DEPARTMENT
CRIMES AGAINST PERSONS SECTIONWITNESS STATEMENTOffense: Capital Murder
Complainant: Robert England
Address: DeceasedThis STATEMENT was given voluntarily to: Det. Alfonso Marquez #314
of the EL PASO POLICE DEPARTMENT by: Rodolfo Flores

Address: 10269 Shenendoah Phone # 757-6411

Employment: Phone #

DOB: 9/9/77 SSN: DL# State:

Other data:

Time: 5:53 PM

Date: Wed, Apr 14, 1993

My name is Rodolfo Flores and I live at 10269 Shenendoah. Right now I am in the Crimes Against Persons Office where I am giving this statement to Det. Alfonso Marquez. This statement is about a shooting that happened on Electric Street on Saturday morning. This was where two guys were killed. I knew both of the guys that got killed, but the only one that I used to talk to was Robert England. (I did know Armando Lazo, but I did not talk to him.) I have been asked what I did on Friday the night before they got shot. I was with Jose Juarez, Ben, whom I don't know his last name, and Betty, whom I don't know her last name either, and we were at Melissa Balli house, on Sun Valley.

We left the house around 11:00 PM, and dropped off Ben on Jamaica Street. Going to Jamaica, we drove up Fairbanks, and made a U-turn and went onto Jamaica. We noticed that 'here was a party on Jamaica, and there were some people out in the middle of the street. We just (passed by them and they looked at us. We were in Jose Juarez's car, which is a Green Pontiac Grand Prix. The car is a two door (and is dropped), and it had a dent on the passenger side of the door. We then drove up to Trans Mountain and got on the freeway towards Cohen stadium.

We then went to drop off Betty who lives in the Central area of town, on McConnel street. She lives in some apartments. We then went and got some gas, and drove back home. We then got back on the freeway, and got off on Trans-Mountain and went east on Trans-Mountain till we turned on Electric street. I remember looking at the clock in the car, and (It read 12:15-12:20 AM. I did not see any ambulances, police, or anybody in the street. I did not see any body in the area.

(From Electric street it is only about 1 to 2 minutes to get to my house.)

0000761
Page 1

Statement of: Rodolfo Flores

Case No: 93-100037

**
**
****EL PASO POLICE DEPARTMENT
CRIMES AGAINST PERSONS SECTION****WITNESS STATEMENT**Offense: Capital Murder
Complainant: Robert England
Address: DeceasedI then went inside and went to sleep. I did not hear any gun shots that night.

On Saturday the next day at about 10-11 in the morning, Officer McDaniel came to my house and asked me if I knew anything about the murders. I told him that I did not.

I used to be in LML (LOS MIDNIGHT LOCOS) but I have quit the gang.

I then went to Abraham Chacon's house which is on Ajax street. There I talked to RickMartinez, when he drove up with his wife and baby. I aksed him if he had heard about the shooting on Electric. He said no, and then I told him that the Detectives had been to my house. He then asked me "What did they tell you?, Did they ask you anything about me".I told him no. He then said "I'm the one that shot at them." I was going to ask him some more about the shooting but his wife showed up and he got in the car. He did not tell me who was with him. I was at Abrahams house when Rick called and told Abe that he wanted to drink some beers, but that he did not want to drink at his apartment cause the Police were watching his apartment and he did not want to be questioned by them. That he would bring some beers later.I have been asked if Rick owns any guns and he does. I know that he has alot of guns, but sometimes he trades or sells them.

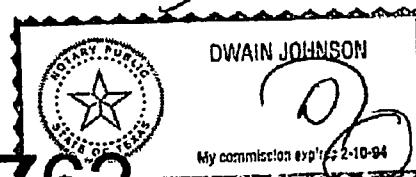
Rick Martinez lives in the Village Green apartments but I don't know the number of the apartment.

I want to say that I am not lying about Rick telling me that he shot at the guys on Electric, and I want to say that I had nothing to do with the shooting or death of either Robert England or Armando Lazo.

I HAVE READ THE ABOVE STATEMENT CONSISTING OF TWO PAGES AND EVEN THOUGH IT IS NOT IN MY EXACT WORDS I FIND IT TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Signed Rodolfo Flores

Witness _____



0000762

EXHIBIT

50

EL PASO POLICE DEPARTMENT
SUPPLEMENT REPORT

H3

Reported Date: 04/10/93 Time: 23:47 Case: 93-101016 Page: 1
 Code: 19.02ATT PC Crime: ATTEMPT MURDER Class: 000001
 Occurrence Date: 04/10/93 Day: SATURDAY - Time: 23:45-
 Status: Clearance: Closing Officer:
 Location: 10200 SHENANDOAH ST., EP RD: 64

NARRATIVE

WITNESS/SWORN/STATEMENT

COMPLAINANT:
ADDRESS:

JUVENILE

THIS STATEMENT GIVEN VOLUNTARILY TO: OFFICER ART PEREZ #922
 of the EL PASO POLICE DEPARTMENT BY: RODOLFO FLORES
 SOCIAL SECURITY #: LNK
 ADDRESS: 10269 SHENENDOAH
 DOB: 9-9-77
 HOME PHONE NUMBER: 757-6411
 WORK PHONE NUMBER: N/A
 DRIVER'S LICENSE: NONE
 DATE & TIME: APRIL 11, 1993 0130 HRS.

DUPLICATED FOR QUALITY

My name is RODOLFO FLORES AND I AM 15 YEARS OLD AND I HAVE RECIEVED PERMISSION FROM MY PARENTS TO GIVE OFFICER PEREZ A STATEMENT REFERENCE A SHOOTING THAT TOOK PLACE ON SATURDAY AT APPROXIMATELY 11:30PM. I AM CURRENTLY AT THE NORTHEAST POLICE STATION GIVING OFFICER PEREZ THE STATEMENT REFERENCE THE INCIDENT. MYSELF, ABE, MIKE AND EDDIE WERE GOING TO A PARTY ON SHENENDOAH STREET. ON THE WAY TO THE PARTY WE DROVE DOWN BLOSSOM AND NOTICED TWO GUYS SITTING IN A TRUCK THAT WAS PARKED NEXT DOOR TO THEIR HOUSE. AS WE WERE PASSING BY, THEY PULLED OUT A 12 GAUGE SHOTGUN AND EDDIE GOT MAD. WE PARKED AT THE PARTY WHICH WAS RIGHT AROUND THE BLOCK FROM WHERE WAYNE AND LARRY WILLIAMS WERE. EDDIE STOOD IN THE CAR AND I WENT TO GO TALK TO WAYNE AND LARRY. WHEN I WAS SHOWING UP, THEY PULLED OUT THE GUNS BECAUSE THEY THOUGHT I WAS EDDIE. I STARTED TALKING TO WAYNE AND LARRY. ABE, MIKE AND EDDIE HAD LEFT BECAUSE ABE'S MOM WANTED THE CAR BACK BY 11:00. WHILE I WAS TALKING WITH WAYNE AND LARRY, I SAW ABE, MIKE AND EDDIE DRIVE BY CERMAC. I GUESS ABE'S MOM DROPPED THEM OFF AT THE PARTY AND THEY FILLED UP THEIR CUPS. AFTER THEY FILLED UP THEIR CUPS, THEY STARTED WALKING DOWN SHANENDOAH THEN BLOSSOM WHERE I WAS AT. THEY ALL GOT WHERE I WAS AT WITH WAYNE AND LARRY AND EDDIE ASKED WAYNE, WHY ARE YOU ALWAYS PULLING OUT GUNS AT ME, AND HE TOLD LARRY, "YOU TOO FUNK, WHY ARE YOU ALWAYS PULLING OUT GUNS AT ME". THEN LARRY WENT TO HIS TRUCK AND TRIED TO GET HIS 12 GAUGE. EDDIE SLAMMED THE DOOR ON HIM AND WAYNE PULLED OUT A 357 HANDGUN OUT OF HIS POCKET AND STARTED SHOOTING AT ABE, MIKE AND EDDIE. MIKE GOT AWAY AND HE RAN TO MY HOUSE WHICH IS RIGHT DOWN THE STREET ON SHANENDOAH. I WAS ALREADY ON THE CORNER OF CERMAC AND BLOSSOM WHILE THE SHOTS WERE BEING FIRED. I RAN TO MY HOUSE AND MIKE MET ME THERE. WHEN WAYNE STARTED SHOOTING, I HEARD EDDIE SAY "AHH" AND HE FELL. I AM POSITIVE THAT WAYNE IS THE ONE WHO FIRED THE GUN THAT HIT EDDIE AND ABE. BEFORE EDDIE, ABE AND MIKE SHOWED UP, WAYNE AND LARRY HAD SHOWN ME A 357, A 38, A 45 AND A 12 GAUGE SHOTGUN WHICH THEY HAD ASKED ME IF I WANTED TO BUY A GUN. AFTER THE SHOTS HAD BEEN FIRED AND WHILE I WAS ON THE WAY HOME I HEARD THE COPS. ME, MIKE AND MY SISTERS BOYFRIEND JOSE, WENT BACK DOWN THE STREET WHERE THE SHOOTING TOOK PLACE AND TOLD THE POLICE WHAT HAD HAPPEN. THE POLICE THEN TOOK ME TO THE NORTHEAST POLICE STATION. I WOULD LIKE TO SAY THAT I WAS THERE WHEN THE SHOOTING WENT DOWN. I SAW WAYNE SHOOT EDDIE THEN

Standard Trailer 1 - First Page

Reporting Officer: PEREZ Number: 000922 Date: 04/10/93 Time: 23:47
 Typed by: 922 Number: 922 Date: 04/11/93 Time: 01:26
 Approving Officer: ROUNTREE Number: 000443 Date: 04/11/93 Time: 03:36

*
*
*

h2

CONTINUED FROM PREVIOUS PAGE

Reported Date: 04/10/93 Time: 23:47 Case: 93-101016 Page: 2
 Code: 19.02ATT PC Crime: ATTEMPT MURDER Class: 000001

SHOOT AT ABE POINTING AT HIM AT ABE'S HEAD. I THOUGHT HE HAD SHOT ABE ON THE HEAD. WAYNE WENT CRAZY AND WAS SHOOTING EVERYWHERE. LATER I FOUND OUT THAT HE HAD EVEN SHOT HIS BROTHER LARRY ON HIS FOOT OR HIS LEG. I KNOW WAYNE VERY WELL BECAUSE I USED TO GO TO SCHOOL WITH HIM. I WAS CLOSE ENOUGH TO SEE WAYNE SHOOT ABE AND EDDIE AND I HAVE NO DOUBTS AS TO WHO DID THE SHOOTING. I HAVE READ THE ABOVE STATEMENT AND FIND IT TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Subscribed and sworn to before me, the undersigned authority,
 on this _____ day of _____ 19____.

WITNESSES:

DUPLICATED FOR QUALITY

JUVENILE

TRAILER 2 - Continuation Page

Reporting Officer: PEREZ Number: 000922 Date: 04/10/93 Time: 23:47
 Typed by: 922 Number: 922 Date: 04/11/93 Time: 01:26
 Approving Officer: ROUNTREE Number: 000443 Date: 04/11/93 Time: 03:36

=====

EL PASO POLICE DEPARTMENT

H3 SUPPLEMENT REPORT

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Reported Date: 04/10/93 Time: 19:05 Case: 93-100037 Page: 1
 Code: DU AD Crime: DEATH UNATTEN Class: 010101
 Occurrence Date: 04/10/93- Day: SATURDAY - Time: 00:15-
 Status: Clearance: Closing Officer:
 Location: 10000 ELECTRIC AV., EP RD: 64
 DITCH AREA EAST O/ROAD /MURDER

===== NARRATIVE =====
 ===== WITNESS/SWORN/STATEMENT =====
 COMPLAINANT: ROBERT ENGLAND
 ADDRESS: DECEASED

 THIS STATEMENT GIVEN VOLUNTARILY TO: DET. JOE E. LAREDO JR#824
 of the EL PASO POLICE DEPARTMENT BY: FRANCISCO JAVIER FLORES
 SOCIAL SECURITY #: 457-47-2187
 ADDRESS: 10269 SHENANDOAH
 DOB: 09/20/72
 HOME PHONE NUMBER: 757-6411
 DRIVER'S LICENSE: NONE
 DATE & TIME: APRIL 14, 1993 4:25 PM

 My name is Francisco Javier Flores, and I am 20 years of age. I live with my mother, Teresa Flores, my sister Araceli Flores who is 18 years old and my younger brother, Rudy Flores who is 15 years old. We live at 10269 Shenandoah in northeast El Paso. I attended high school up until the tenth grade, I do know how to read and write the English language.

I am at the El Paso Police station giving this statement to Det. Laredo of my own free will. The statement is about what I know about the shooting that happened by where I live.

I want to start by saying that I used to belong to the LML gang, but I no longer run with them. I'm known as Dirt around the neighborhood and most of my friends know me by that nickname.

Det. Laredo has asked me what I did Friday, Good Friday this past weekend. In the afternoon I walked to Fernnie Samaneigo's house at 10112 Shenandoah. From there Fernnie, his sisters', Betsy and Jannet, Alex who they call Pickle, Jesus who's last name I don't know and Ricardo, who last name I don't know went to a going away party at the Arrowhead apartments on Dyer. The ones that are right in front of Arby's. I think that the guy's name is James, the one that had the apartment there, I really don't know him he was Jannet's friend. Ricardo had picked us up in his brown Ford LTD. It is dark brown, light tinted windows, I think it's a four door.

We all got to the party at about 5, 5:30. We stayed there playing basket ball and swimming. Ricardo and Betsy left the party about 9 - 10 o'clock, I think that they went home. The ones that stayed at the party were, Betsy, Fernnie, Jesus, Alex, Hector Contreras and his wife Liz who had arrived at the party on there own, and James and his brother who's name I don't know. At about 11:50 for so, Fernnie called his mom to come pick us up. She got there at about mid- night and she drives a small red Toyota Corona. She picked us up, it was Fernnie, Jannet, Alex, Jesus and myself and she took Jesus home first. He lives somewhere around Bradley Elementary school, and then she took me home

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Standard Trailer 1 - First Page

=====

Reporting Officer: LAREDO
 Typed by: 824
 Approving Officer: LAREDO

0000763

Number: 000824 Date: 04/10/93 Time: 19:05
 Number: 824 Date: 04/14/93 Time: 16:19
 Number: 000824 Date: 04/14/93 Time: 16:53

h2

CONTINUED FROM PREVIOUS PAGE

Reported Date: 04/10/93 Time: 19:05

Case: 93-100037

Page: 2

Code: DU AD

Crime: DEATH UNATTEN

Class: 010101

xt. I would say I got home at about 12:30. my mother was the only one at home at the time and she was watching TV. She asked me if I had been drinking that day and I told her that I hadn't because I was Good Friday. I went straight to bed after that.

Det. Laredo has asked me where Rudy was and as far as I know he was with a girl (name Malisa, who lives on Sun Valley, my sister Celi and her boyfriend Jose Juarez. I don't know where they were but I know for a fact that they weren't home when I got there.) I don't know what time they got home either. If they were together they were in Jose's car the green Gran Prix, it's an 80's model, the smaller kind.

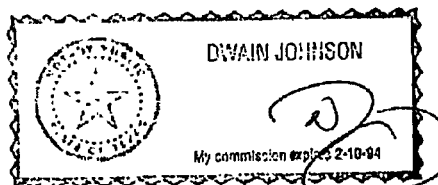
The guys that were killed I knew, I used to talk to them in Juarez and I never had any problems with them. They used to tell me about my little brother, that he thought that he was bad shit. The only reason that I would say that Rudy hated these dudes was because they were ECH gang members and Rudy is supposedly a hard core LML member. I know that my brother crashed his car into the ECH gang members one time, but it wasn't the dudes that were killed. ECH one time shot at my house because of my little brother Rudy. That is about all I know about what happened.

I HAVE READ THE ABOVE STATEMENT AND FIND IT TO BE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Frank Flores

Subscribed and sworn to before me, the undersigned authority, on this 14 day of April 1993.

WITNESSES:



TRAILER 2 - Continuation Page

Reporting Officer: LAREDO

Typed by: 824

Approving Officer: LAREDO

0000764

Number: 000824 Date: 04/10/93 Time: 19:05

Number: 824 Date: 04/14/93 Time: 16:19

Number: 000824 Date: 04/14/93 Time: 16:53

=====

H3 EL PASO POLICE DEPARTMENT *
SUPPLEMENT REPORT *

=====

Reported Date: 04/10/93 Time: 19:05 Case: 93-100037 Page: 1
 Type: DU AD Crime: DEATH UNATTEN Class: 010101
 Occurrence Date: 04/10/93- Day: SATURDAY - Time: 00:15-
 Status: Clearance: A Closing Officer: C00048 MACIAS
 Location: 10000 ELECTRIC AV., EP RD: 64
 DITCH AREA EAST O/ROAD /MURDER

===== NARRATIVE =====

OFFENSE: CAPITAL MURDER
 COMPLAINANT NAME: ROBERT ENGLAND
 ADDRESS: DECEASED

SUPPLEMENT DATE: 5/5/93
 SUPPLEMENT TIME: 10:30 AM
 OPERATOR'S ID#: 314

Undersigned on 4/10/93 was called by Sgt. Johnson at approximately 1:00 AM, and advised to proceed to the 10000 block of Electric on a double shooting, in which one of the victims had expired and the other had been taken to a local hospital.

Upon arrival at the location at approximately 1:20 AM, undersigned was met by Det. Arbogast, who was already at the scene. He advised that a drive by shooting had occurred and that it had involved four victims two of which had been shot. He also advised that the two remaining persons that had been shot at were seated in separate patrol cars. It was also learned that one of the victims later identified as Armando Lazo, had managed to make it to a residence and asked for help. He had been transported to RETGH. The other victim identified as Robert England had expired at the scene.

Undersigned viewed the covered body of Robert England at a distance. Undersigned was then instructed to take the witnesses who had been with the victims at the time of the shooting to the C.A.P. office for interviews and statements.

Undersigned took a statement from a Jesse Hernandez, of 5504 Pembroke Phone #755-1799, who had been with the victims on the night of the shooting. In his statement he advised that the victims Robert England, Armando Lazo, Adrian (Jesse's brother) Mark and Hector Ochoa, who live at 10024 Goliad, and Juan Medina, of Chaparral New Mexico, had been at a party on Jamaica street. That Adrian, Mark, and Hector, had left the party and did not return to pick the two victims up, to include Juan Medina, and Jesse Hernandez. That they decided to walk home, and were walking east on Woodrow Bean Rd., when they confronted a vehicle with an unknown number of subjects in the vehicle. This confrontation was that of mistaken identity, as they thought it was Jesse's brother, Hector and Mark. The vehicle was described as a possible Marron or Red Monte Carlo, with tinted windows. He also stated the vehicle had a white vinyl top. Hernandez stated that then drove off and approached them minutes later on Electric street, and began to fire some shots at them. He remembers only three shots, at the time, and they all began to run. He then returned to the scene and advised the Police at the scene that two of his friends were missing. Hernandez pointed out a 1976 Chevrolet Caprice as the vehicle from which the shots had been fired from. Further investigation revealed that Hernandez was having problems identifying the vehicle from which the shots had been fired from. The vehicle was later said to be a Buick, a Pontiac, after he had picked out the Chevrolet Capric, from the original Chevrolet Monte Carlo.

Statement was taken from Juan Medina, who basically related the same

Standard Trailer 1 - First Page

Reporting Officer: MARQUEZ
 Typed by: 314
 Approving Officer: MARQUEZ

0000450

Number: 000314 Date: 04/10/93 Time: 19:05
 Number: 314 Date: 05/05/93 Time: 10:31
 Number: 000314 Date: 05/05/93 Time: 12:24

h2

CONTINUED FROM PREVIOUS PAGE

Reported Date: 04/10/93 Time: 19:05 Case: 93-100037 Pas*: 2
 Code: DU AD Crime: DEATH UNATTEN Class: 010101

Information, other than describing the vehicle as a 1970's model Monte Carlo, goldish in color with tinted windows. He picked out a 1975 Chevrolet Monte Carlo. Statements are attached to the case.

On 4/14/93 a statement was taken from Javier Flores (AKA) Dirt, of the LML gang (Los Midnight Locos) after information had been received that he and his brother Rudy Flores (AKA) Dust, may have been involved in the shooting. It was determined that Javier Flores (Dirt) had no involvement in the case. In the statement given by his brother Rudy Flores (Dust) he indicated that a Rick Martinez who lives on Ajax street, had been responsible for the shooting. Martinez was brought into the C.A.P. office and it was also determined that he was not involved in the case. Flores was confronted as to why he had indicated Martinez as the responsible party, and he stated that he had advised undersigned that Martinez had been worried that the Police would think that he may have been involved because of his past history and involvement in gangs which he too was a member of.

During the entire case undersigned and other investigators were receiving informatin that Javier and Rudy Flores were responsible for the shooting. Statement were taken from a Terri Vinson, of 5205 Fairbanks #63, Tonya Vinson of the same address, Charles Blucher of 5205 Fairbanks #21, and a Terrance Strong Farrar, of 5205 Fairbanks #24, all of which were rumors. Investigators were concentrating on the LML gang, and the Flores brothers were two of the most influential members of the LML gang.

A statement was taken from a Cynthia Talamantes of 3700 Ft. Blvd. who stated that she had overheard a conversation at Irvin High School, and that an Eddie had stated that a friend of his had done the shooting. Eddie was located and identified as Eduardo Valles of 3709 Leavell, and he relayed that he had heard the rumor from another friend of his by the name of Ralph Medina. Undersigned along with assisting investigators checked out the stories, and were proven again to be rumors.

A statement was taken from a Gilbert Garcia of 5017 Louis, who relayed the same information, with negative results.

As a result of investigation the Flores brothers were eliminated from the investigation as well as Rick Martinez.

Undersigned on 4/15/93, received information that a Robert Hall, of 110 Heinick, Chaparral New Mexico, had relayed to the school pricipal at Gadsden Jr. High, that a Jacob Jauregui, and a Michael Johnston of Chaparral New Mexico had been bragging that they were responsible for the shooting with Jauregui, being the shooter. A statement was taken form Robert Hall, and also a hand written report that he had given the principal at Gadsden Jr. High.

Jacob Jauregui, and Michael Johnston were picked up in Chaparral New Mexico, with the assistance of West Gilbreath of the Dona Ana Sheriffs Department. Searches were conducted in Chaparral New Mexico, with negative results. Both Jauregui, and Johnston were interviewed at YSD, and JPD, with the assistance of Det. C. Ortega of YSD, and both were determined to be bragging and turned out to be rumors being spread by them. Johnston gave five

different versions of what had occurred, and each one was different from the other. It was determined that both of them were not involved in the case. On 4/21/93, a statement was taken form a David Rangel, of 8140 Tierra Verde, who stated that his cousin a Daniel Villegas had told him that he was the one responsible for the shooting. The statement and information provided by David Rangel was accurate in the nature of the investigation. Also mentioned were

TRAILER 2 - Continuation Page

Reporting Officer: MARQUEZ

Typed by: 314

Approving Officer: MARQUEZ

0000451

Number: 000314 Date: 04/10/93 Time: 19:05

Number: 000314 Date: 05/05/93 Time: 10:31

Number: 000314 Date: 05/05/93 Time: 12:24

h2

CONTINUED FROM PREVIOUS PAGE

Reported Date: 04/10/93 Time: 19:05 Case: 93-100037 Page: 3
 Code: DU AD Crime: DEATH UNATTEN Class: 010101

Other individuals that had been with Villegas during the shooting. A hand written short synopsis of what he was told by his cousin Daniel Villegas as well as a typed statement were taken from Rangel. Mentioned in the statement was a Marcos Gonzalez, as being the driver of the vehicle involved in the shooting. Both of these statements are attached to the case.

On same date 4/21/93, statement was taken from a Rodney Williams of 5249 Wren #201, who stated that he had been in the vehicle that had shot and killed the victims but that he had not been the actual shooter.

On 4/22/93, as per the statement of Rodney Williams, Daniel Villegas was picked up and taken to Juvenile Probation Department with the assistance of Det. C. Ortega, of YSD, and a subsequent statement was taken from him, in which he implicated himself as the shooter. The statement was accurate as per the investigation conducted.

On same date 4/22/93, Marcos Gonzalez, of 5700 Wren, was picked up and brought to the C.A.P. office where he in-turn gave a statement of the accused to Det. S. Graves, and he implicated himself as being involved in the shooting. Marcos Gonzalez, was booked in City/County Jail, and Daniel Villegas was accepted at the Juvenile Probation Department.

Undersigned then re-interviewed Rodney Williams at YSD, and at this point he stated that he did not wish to give a second statment, as what he had stated in the first statement was the truth, with the exception that no one else was in the vehicle besides Marcos Gonzalez, and Daniel Villegas, and if undersigned wanted to put him in the "Detention Home" to go ahead.

Undersigned presented the entire case at the point of investigation to the Juvenile Probation Department who accepted the case against Rodney Williams and was placed in Juvenile Probation Department.

Statement was taken from a Fernando Lujan who stated that he was not involved in the shooting as implicated by the above individuals, and his story was verified. He did state that he had observed Villegas with a .22 calibre handgun, (same calibre as used in shooting) in the past and a search warrant was obtained for the residence of Daniel Villegas with negative results.

Undersigned has not been able to locate weapon used in the commision of the offense, nor the vehicle in question, and it is felt that the weapon may have been disposed of, and subjects will not say who's the owner of the vehicle used in the commission of the offense.

It should be noted that the three subjects arrested in this case are known members of the VNE gang (Varrio North East) and the victims are known members of the ECH gang (Eisenhower Crazy Hoods) who are rival gangs, in the North east area of El Paso.

INVESTIGATION CONTINUES...

T R A I L E R 2 - C o n t i n u a t i o n P a g e

Reporting Officer: MARQUEZ
 Typed by: 314
 Approving Officer: MARQUEZ

0000452

Number: 000314 Date: 04/10/93 Time: 19:05
 Number: 314 Date: 05/05/93 Time: 10:31
 Number: 000314 Date: 05/05/93 Time: 12:24

VILLEGAS J.S. 030419

EL PASO POLICE DEPARTMENT
SUPPLEMENT REPORT

H3

Reported Date: 04/10/93 Time: 05:14 Case: 93-100039 Page*: 1
 Code: DU AD Crime: DEATH UNATTEN Class:
 Occurrence Date: 04/10/93- Day: SATURDAY - Time: 00:15-
 Status: AS ASSIGNED Closing Officer:
 Location: 10000 ELECTRIC AV., EP RD: 64
 REF:CASE 93-100037

===== NARRATIVE =====

OFFENSE:CAPITAL MURDER
 COMPLAINANT NAME: ARMANDO LAZO
 ADDRESS: DECEASED

SUPPLEMENT DATE: 6/1/93
 SUPPLEMENT TIME: 1:20 PM
 OPERATOR'S ID#: 314

UNDERSIGNED RECEIVED THIS CASE WITH THE MASTER CASE BEING 93-100037, AND THE
 CASE HAS BEEN PRESENTED UNDER THE MASTER CASE.
 THIS CASE IS BEING CARRIED AS CLEARED BY ARREST.

CLEARED BY ARREST.

JUVENILE

TO LAW ENFORCEMENT AGENCY ONLY
 CERTAIN ELEMENTS OF THIS CASE ARE SUBJECT TO
 NONDISCLOSURE IN ACCORDANCE WITH THE TEXAS
 OPEN RECORDS ACT (6262-17 & V.A.C.S.)
 DATE: BY: TO:

Standard Trailer 1 - First Page

Reporting Officer: MARQUEZ
 Typed by: 314
 Approving Officer: MARQUEZ

0000438

Number: 000314 Date: 06/01/93 Time: 13:20
 Number: 314 Date: 06/01/93 Time: 13:23
 Number: 000314 Date: 06/01/93 Time: 13:27

ATTACHMENT 2-E

CHRONOLOGICAL RECORD

E: Daniel Villegas

OFFENSE: Murder, Capitol

O.B.: 1.4.77

E.P.D.#: 93100037

4-22-93

1115

Went back to Detention to speak with Daniel Villegas. With me was Intern Argelia B. I first completed the intake packet (made sure everything was answered & filled in). I then proceeded to ask him his opinion of the incident. He claims that him & his friends weren't around that area that night. I asked where he was and if he could produce someone to testify to him being elsewhere. He said that him & his friends were at "Negros" house. "Negro" is a 28 y.o. male who has recently been let out of prison (pen) approximately 2 years ago. He repeatedly made mention that his friends were putting the finger on him even though he didn't do it. He sat there shaking and looking quite scared. I asked him why he gave a confession and why he looked scared. He stated that he only gave the confession because the cops kept harassing him, so he told them what they wanted to hear. He also stated that he didn't want to go to the County because he wouldn't make it there. He became upset when I told him that all confessions and witness statements made him the shooter. He said he wanted to talk to his friends and get them to change their stories. I told him it wouldn't be necessary because he already confessed to it. I asked him about remaining silent and if he understood that. He said that the cops read him his rights but that all he could remember was to remain silent. I said, "Well why didn't you keep your mouth shut." He responded with "I was tired and wanted to go back to sleep, so I told them what they wanted hear."

VILLEGAS J.S. 003764

CHRONOLOGICAL RECORD

E: Daniel Villegas

OFFENSE:

O.B.: 1-4-77

E.P.P.O. #:

4-22-93

contd.

I told Danny that I would let him know what was going on each step of the way. He asked me to tell his mother to get a hold of Bobby Morad (Morad) and tell him to come help Danny out. Bobby Morad is Danny's biological father. His mother never married him. Priscilliano is known to be the biological father because Danny was only 6 months old when his mother married him. Danny says he talks with Bobby about once every three years. He doesn't receive any money from him, but knows that his mother can get in contact with him. Danny asked about visiting hours. Told him his mom would probably be by around 7 pm. as visiting hours are from 7 pm to 8 pm. Also instructed him that his mother had to call Oscar Reyes and ask permission to see him. Oscar was the only one who would give permission. I also instructed him that if he needed to talk to me or ask questions for him to ask if he could talk w/ me and I'd go back and talk with him.

CHRONOLOGICAL RECORD

E: Daniel Villegas

OFFENSE: Murder, Capital

O.B.: 14-77

E.P.P.D.: 93-100037

Interview with parents

4-23-93 Yolanda Villegas was contacted at 755-1862 at 9⁰⁰ am and told to come down to JPD to hold an interview with me. M. Sotelo asked her to bring her husband and she said they'd be down later.

9⁴⁰ Parents arrive hold interview with parents and discussed their relationship w/ Danny. Danny rarely checks her fav. He's usually home around 2-2³⁰ in the morning on weekends and around 11³⁰ on weekdays. He usually argues w/ his mother and talks better w/ his dad. Mother claims that he usually physically aggressive towards her. Parents are aware that he is using drugs and is drinking. During counseling sessions he lies to her and tells her that he hasn't had a lot of anything. Parents are worried about the seriousness of the charges against their son. Told them to be here at 10³⁰ am if not earlier tomorrow morning.

215 Spoke w/ mother. She asked how he was doing. Explained to her that he's okay and would be seeing a doctor for the mteye and a tooth ache. She claims that he didn't do it and that he is trying to make himself look big - that's it is all a bunch of lies.

ATTACHMENT 2-F

DANIEL VILLEGAS,)
)
 Plaintiff,)
 v) No. 3:15-CV-386
)
 CITY OF EL PASO, et al.,)
)
 Defendants.)

DECEMBER 13, 2022

Ginger G. Zachary, CSR, RPR, CRR

Pedro A. Ocegueda - December 13, 2022

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A P P E A R A N C E S

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HECTOR LOYA, AND RAY SANCHEZ:

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A P P E A R A N C E S (continued)

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ALSO PRESENT:

Video Technician Roger Navarro
 Ms. Christy Burke

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PEDRO ANTONIO OCEGUEDA

By Mr. Denton

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Reporter's Certificate

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Corrections and Signature

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EXHIBITS

NO.	DESCRIPTION	ATTACHED
Exhibit 01	El Paso Police Department Personnel Incident Report, CP92-296	
Exhibit 02	El Paso Police Department Personnel Incident Report, CP92-358	
Exhibit 03	El Paso Police Department Personnel Incident Report, CP93-097	
Exhibit 04	Affidavit of Pedro Ocegueda	
Exhibit 05	Affidavit of Jesus Terrones	

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1 THE VIDEO TECHNICIAN: Good morning. This
2 is the videographer, and I am recording now, and we are
3 on the record. The date is Tuesday, December 13, 2022,
4 and the time is 9:05 a.m. This is the Zoom-recorded
5 video deposition of Pedro Ocegueda.

6 Will counsel attending via Zoom please
7 state your appearances, please?

8 MR. DENTON: I'm Lowell Denton for the City
9 Of El Paso.

10 MR. AINSWORTH: This is Russell
11 Ainsworth --

12 MR. ALMANZAN: This is Andy Al- --

13 MR. AINSWORTH: -- appearing on behalf of
14 the plaintiff.

15 MR. ALMANZAN: Oh, sorry. This is Andy
16 Almanzan on behalf of Defendant Carlos Ortega.

17 MR. BRITTAIN: Eric Brittain --

18 MR. JEEP DARNELL: This is Jeep -- oh,
19 sorry. Go, Eric.

20 MR. BRITTAIN: Eric Brittain on behalf of
21 Defendant Kimmett Bellows.

22 MR. JEEP DARNELL: This is Jeep Darnell on
23 behalf of Defendants Officers Arbogast, Graves, Loya,
24 and Sanchez.

25 MR. MARTINEZ: Jim Martinez for Alfonso

Pedro A. Ocegueda - December 13, 2022

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1 Marquez.

2 (Witness duly sworn.)

3 MR. DENTON: Mr. Ainsworth?

4 MR. AINSWORTH: Yeah. Thank you so much.

5 I just wanted to state on the record that
6 Plaintiff objects to this deposition. It's taken out of
7 time without agreement. And for the reasons we've
8 stated on our numerous correspondence, we are not
9 participating in this deposition. We do not agree to it
10 going on, and we will object to any use or reliance on
11 this deposition or its transcript or video recording.

12 And so with that, I'm going to leave the
13 deposition, and you gentlemen can continue as you see
14 fit. Thank you very much. Bye.

15 (Mr. Ainsworth not present.)

16 MR. DENTON: All right. We ready?

17 PEDRO ANTONIO OCEGUEDA,
18 having been first duly sworn, testified as follows:

19 EXAMINATION

20 BY MR. DENTON:

21 Q. Will you tell us your name, please, sir?

22 A. My name is Pedro Antonio Ocegueda. Everybody
23 calls me "Pete."

24 Q. All right. And where do you live?

25 A. I live here in El Paso at 12612 Tierra Alzada,

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1 79938.

2 Q. Very good.

3 Where were you born?

4 A. I was born here in El Paso.

5 Q. Lived here all your life?

6 A. All my life.

7 Q. Very good.

8 Were you at one time an employee of the
9 El Paso Police Department?

10 A. Yes, I was.

11 Q. Were you a sworn police officer?

12 A. Yes, I was.

13 Q. Tell the jury a little bit about your career.
14 When did you start with the El Paso Police Department?

15 A. I graduated from the academy January 1977. And
16 ever since then, I went all the way through April of
17 2001, when I retired.

18 Q. Retired in 2001?

19 A. Yes, sir.

20 Q. All right. And may I ask you your age, sir?

21 A. I'm 67 -- 68. Yeah.

22 Q. Very good.

23 So been retired since 2001.

24 A. Yes.

25 Q. All right. We appreciate you being here today

Pedro A. Ocegueda - December 13, 2022

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1 to provide some testimony and -- and shed some light on
2 the time period.

3 Were you involved in any way in the
4 investigation of the Lazo and England murders resulting
5 in the eventual conviction of Daniel Villegas?

6 A. Yes, I was.

7 Q. All right. You said that you were in patrol
8 for a period of time in the department?

9 A. Yes. Approximately seven years.

10 Q. Who was your supervisor there?

11 A. I had several supervisors: Mike Franco, John
12 Scagno, and several lieutenants.

13 Q. Now, John Scagno eventually became police
14 chief, correct?

15 A. That's correct.

16 Q. All right. And what was your experience having
17 him as your sergeant?

18 A. He was very knowledgeable, very professional,
19 and a good -- good leader.

20 Q. What was his attitude about professionalism and
21 compliance in policing?

22 A. He was very -- well, how can I say it -- strict
23 about that. He was very professional, wanted all of us
24 to be professional and -- and most of us followed his
25 lead.

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1 Q. Okay. Walk the jury through your progression
2 through the ranks. You start out as a patrolman. What
3 was your next rank?

4 A. The next rank was detective, when I was
5 assigned to crimes against persons -- I mean, not crimes
6 against -- criminal investigations, which is crime
7 scene. I -- they called it back then "ID and R," which
8 is the criminalistics unit at that time.

9 Q. All right.

10 A. And then from there, I went to -- I worked vice
11 a couple years. Where else did I go? That's pretty
12 much it.

13 Q. How did you go from the patrolman rank to the
14 detective rank? What was involved?

15 A. I -- I was promoted. I had to take a test and
16 then promoted into detective rank.

17 Q. Tell the jury a little bit about promoting to
18 detective. What does that test involve? Was there any
19 process?

20 A. Yes, it's a process. There's several -- I
21 don't know -- officers that take the -- the test and, I
22 mean, I'm -- I don't remember exactly how many, but
23 there was anywhere from 60 to 80 of us taking the test.
24 It's a competitive test. We studied for it, studied the
25 different materials that are going to impact the

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1 detective sections, and we take a test. And then
2 whoever passes, you get ranked. You're put on a list,
3 and from that list is where the selections are made.

4 Q. And how do you know what materials to study?

5 A. Well, that -- they give you study materials for
6 the test: the Code of Criminal Procedures, Penal Code,
7 the different sections that you would investigate, like
8 robbery, murders, all the different types of
9 investigations that you would be conducting as a
10 detective.

11 Q. All right. And then eventually -- what year
12 was it that you were assigned to crimes against persons?

13 A. If I remember correctly, it was like '91.
14 Matter of fact, it was April '91.

15 Q. Tell the jury a little bit about that unit.
16 Was -- was that something that you applied for, or did
17 somebody en- -- enlist you? How did that happen?

18 A. Well, I -- I was -- I knew there was a position
19 opening up, and my previous lieutenant, Lieutenant
20 Skanes, Charles Skanes, had become the commander for the
21 detective division, and he asked me to -- if I wanted
22 the position, asked me to put in for it, and I did.

23 Q. Why did you want to go to CAP?

24 A. That's a very elite unit. I wanted to be part
25 of it.

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1 Q. All right. So explain to the jury what you
2 mean by it being an elite unit that was something that
3 you wanted for your career.

4 A. Well, again, CAP is one of the -- everybody
5 wants to -- wanted -- well, back then, wanted to go to
6 CAP. I don't know about now, but back then, that was
7 the unit to be in. And as part of that unit, you would
8 be one of the -- the best of the best, and that's --
9 that's why I wanted to be there.

10 Q. Once you got to the CAP unit, at that point,
11 what was your rank?

12 A. Sergeant. I was a sergeant.

13 Q. Okay. So you had been a detective.

14 A. Yes.

15 Q. And you had since promoted to the sergeant
16 rank.

17 A. Yes. That's correct.

18 Q. How did that promotional process compare to the
19 one for detective?

20 A. It was a little bit more intense because now
21 you're going into a supervisory role, not just a
22 detective, so it was a little bit more competitive. And
23 I think, at that point, it was like 50 to 60 of us
24 taking the test and, again, same thing. If you -- you
25 passed, you get put on a list, and from that list is

Pedro A. Ocegueda - December 13, 2022

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1 where they make the selections.

2 Q. All right. So prior to CAP, where had you been
3 a supervisor once you were a sergeant?

4 A. I was a supervisor with the vice unit, in
5 the -- in the white-collar crime unit -- forgeries and
6 then that kind of stuff -- and then -- then I went into
7 the CAP.

8 Q. Okay. Now, once you were at CAP, what kind of
9 additional training did you have there for the
10 investigative work being done in crimes against persons?

11 A. There was numerous trainings that I took, which
12 included inter- -- interrogations, blood spatter, crime
13 scene management. A whole slew of -- of -- of training.
14 Homicide seminars, I attend several of those.

15 Q. And where were the seminars that you went to?

16 A. They were really everywhere. I attended one in
17 Albany, New York, which is the New York State Police
18 Academy. I went to Dr. King's in Seattle, Washington.

19 Q. And what was that about?

20 A. That was homicide training.

21 Q. Okay.

22 A. That was a two-week course. And that was -- I
23 attended one homicide seminar as well, so --

24 Q. All right. And how did that training compare
25 to the rest of the detectives assigned to the CAP unit?

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1 Was theirs similar or different?

2 A. It was similar.

3 Q. Did you ever have people that were brought in
4 to the department to do training locally?

5 A. Yes, we did. We had several homicide seminars
6 here in El Paso for our -- our group, our department, as
7 well as the local regional departments. Even -- even
8 Juarez Mexican police officers attended.

9 Q. All right. And what would be some examples of
10 that? Professors, teachers, or courses.

11 A. They were all the -- the -- a lot of the
12 leading homicide experts in -- in -- in -- in that area.
13 They would come in. Dr. Henry Lee, Michael Baden,
14 Dr. King from -- from Seattle.

15 Q. So let's go through those briefly. Dr. Lee,
16 what was his specialty or field?

17 A. Forensic -- forensic expert.

18 Q. All right. And Michael Baden, what was his --

19 A. Michael Baden, also a forensic -- a forensic
20 pathologist.

21 Q. Okay. All right. And the other name you
22 mentioned?

23 A. Dr. King?

24 Q. Yes.

25 A. He is also an expert in homicides.

Pedro A. Ocegueda - December 13, 2022

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1 Q. Okay. So I want you to explain to the jury a
2 little bit about your chain of command at that time.
3 Who was your supervisor after you were a sergeant in
4 CAP?

5 A. When I came on was Lieutenant Saucedo, Paul
6 Saucedo.

7 Q. Okay. What was his attitude about this
8 position and the responsibility that it entailed?

9 A. I mean, he was very involved with -- with that
10 position, as a lieutenant, and everybody within the
11 unit. He -- he expected the best of us, very
12 professional, and -- and kind of oversaw everything that
13 we did and --

14 Q. Okay.

15 A. -- and maintained us in a very high-level
16 professionalism in that respect.

17 Q. All right. How would you describe his attitude
18 about policy compliance and compliance with the
19 applicable law in investigation of these crimes?

20 A. He was very straightforward, wanted us to -- to
21 abide by everything that -- that we studied and we
22 learned, which are the laws of Texas.

23 Q. How did your personal philosophy and approach
24 to the job compare to his?

25 A. It was very similar. We had a very similar

Pedro A. Ocegueda - December 13, 2022

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1 type of way of doing things.

2 Q. What were the approaches that you used to try
3 to make sure that your subordinates, the detectives that
4 you were supervising, were carrying out their jobs
5 correctly and in compliance with the laws?

6 A. I would monitor what they did and -- and make
7 sure that they weren't deviating; that we would talk
8 about it and discuss it and make sure that they
9 corrected anything that -- that could be out of place or
10 out of sorts or was not within our responsibilities.

11 Q. All right. Let's -- tell the jury a little bit
12 about what the average workweek looked like. When you
13 showed up on -- did you work Monday through Friday?

14 A. Yes.

15 Q. All right. When you showed up on a Monday
16 morning, what typically was going to happen with you and
17 the detectives working for you?

18 A. We would have a morning meeting. We will have
19 a briefing every morning. It started at 7:45, so that
20 we could hit the ground running at eight o'clock. That
21 was your typical start of Mondays, and every day we had
22 a briefing.

23 Of course, CAP, we were called out, you
24 know, throughout the weekends because that's when a lot
25 of the homicides used to happen. A lot of our cases

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1 would happen over the weekend, so we -- a lot of us
2 would be working. But, still, we would make it in -- if
3 we made in on time on Monday --

4 Q. Uh-huh.

5 A. -- we would have a briefing and -- and there
6 were several other cases going on, so we would kind of
7 brief on all of them. Then we would break out into the
8 different cases and -- and have a meeting with that.

9 Q. So let's break -- let's break out what that
10 briefing looked like. What kinds of discussions were
11 you having about these cases?

12 A. We would have a discussion about everything
13 that was going on in our office. If there was one or
14 two murders at the time, we would discuss those, and
15 then the -- the different sergeants would -- would take
16 their crew or their detectives and break out, and then
17 they would go into a deep -- more detailed into what was
18 going on with that particular case.

19 Q. Okay.

20 A. Let me explain to you the CAP unit was -- was
21 the robbery, hom- -- the robbery section, the homicide
22 section, and the sexual assault section. So there
23 were -- there was like three units in one.

24 Q. Uh-huh.

25 A. Of course, we would -- as a sergeant, we -- we

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1 could pick and choose what detectives would work on the
2 different cases, especially if -- if there was six guys
3 working on one case, you had the others to pick from, so
4 that you could have robbery detectives and sexual
5 assault detectives working on murder cases. So they
6 were all kind of mixed in, you know. But that was the
7 breakdown for the office.

8 Q. And did I -- did I hear you say that you would
9 then have a meeting with your subordinates about the
10 cases that you had?

11 A. Exactly.

12 Q. Okay. And then when would that wrap up? Did
13 that happen every day?

14 A. Every day we would have one, yes.

15 Q. Okay.

16 A. If -- if possible. Again, if we were not
17 working overnight or we weren't working, you know, up
18 until the morning hours of that day, then -- then we
19 would have a meeting when we would come in.

20 Q. Who were the other people in your chain of
21 command above Lieutenant Saucedo?

22 A. There was several commanders that -- that
23 changed out, but it would -- it would be Lieutenant
24 Saucedo, and then at the end would be a different
25 captain, would -- at that time was Charles Skanes. And

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1 then we had several commanders that would go over --
2 well, they were captains/commanders. Same thing. And
3 then after that, Deputy Chief Long, and then, of course,
4 the chief.

5 Q. How often did you have those individuals in the
6 chain of command in the meetings that you were having in
7 the crimes against persons?

8 A. They would come in and check on them -- check
9 in on us, but it wasn't like they would sit in on our
10 meetings or anything like that. When there was a major
11 case, a big case that was happening, they'd come in and
12 check in and see how we were doing and see if we needed
13 anything or -- or that kind of -- just kind of checking
14 in and look in on what we were doing.

15 Q. Now, the cases that you are developing, after
16 you put those cases together, what was eventually going
17 to happen with those investigative files once they were
18 completed?

19 A. They would be put together and prepared for
20 presentation to the district attorney's office.

21 Q. Tell the jury about how that relationship
22 worked with the district attorney's office. Physically,
23 where were they located compared to where y'all are?

24 A. Well, we were at the -- or the Raynor office,
25 at headquarters, police headquarters, and they would be

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1 downtown, at 500 San Antonio.

2 Q. All right. So how did you interact with them?

3 A. By telephone, or we would go over to their
4 office, or they would come over to our office.

5 Q. All right. How commonly were they in your
6 office?

7 A. They were there frequent- -- frequently,
8 depending if they needed to -- to talk to us or -- or
9 the detectives on a -- on a particular case, and they
10 would -- they would come by or -- or they would call us
11 in, see if we could have a meeting at their office.

12 Q. In the course of doing your investigative work,
13 how much access did you have to the prosecutors to talk
14 to them about how to get the file ready to go to
15 submission?

16 A. If we needed to talk to them, we had -- we
17 could call them anytime.

18 Q. Who were the people that you typically talked
19 to in the DA's office in this time frame in the -- after
20 you got there in 1991?

21 A. It would be Marcos Lizarraga, which was the
22 first assistant; Karen Shook, which was a assistant
23 district attorney.

24 Q. Eventually, Karen Larose?

25 A. Karen Larose.

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1 Q. Okay.

2 A. That's correct.

3 Q. Who else?

4 A. John Davis. Who else?

5 Q. Was George Havlovic there then?

6 A. George Havlovic was there, absolutely. Yeah.

7 Q. So during the course of a normal week, how many
8 interactions would there be with the people from the
9 DA's office about pending cases?

10 A. Several. I mean, it would depend on what case.

11 Q. Okay.

12 A. Because it wasn't just my cases. It was the --
13 the whole CAP cases.

14 Q. All right. And then let's talk about the
15 supervisory role that you had on the files that you were
16 working on. What were the things that you were doing to
17 make sure that those files were developed correctly and
18 properly?

19 A. I would -- I would talk -- talk to the
20 different detectives that were handling the different
21 aspects of the case and review with them -- this was
22 part of the meeting. We would talk. Hey, this is what
23 I need to do here, this is what I want to do today, and
24 this is what we're going -- this is how we're going to
25 proceed, and I'm going to need somebody to assist me

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1 with this or with that. Okay. Then do it.

2 Q. One of the issues in this case is compliance
3 with policies and procedures for juveniles. Was that
4 part of your responsibility or role?

5 A. Yes. I mean, it was all of our
6 responsibilities.

7 Q. Okay. So tell the jury, in the time frame
8 we're talking about before this Lazo and England murders
9 in 1993, what was required for investigations that
10 involved juveniles that weren't adults?

11 A. There -- there was -- there was a policy that
12 was put in place by the police department and -- and
13 that was kind of being transitioned into the department
14 because of -- of an incident that occurred in -- in '92
15 with another unit.

16 Q. Which unit was that?

17 A. The tac unit.

18 Q. Okay.

19 A. They -- they implemented this policy which --
20 which coincided with the -- with the law, Texas juvenile
21 law, and they were putting it into place -- of course,
22 our unit, we didn't deal with that many juvenile cases.
23 It was -- it was few and far between that we would
24 handle juveniles, but it affected us as well.

25 Q. Okay.

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1 A. So in those -- in that particular time, when we
2 had a juvenile, we had -- you know, we had to follow
3 the -- the policy and everything, we would get somebody
4 from -- from the JIS unit, which is the juvenile
5 investigative services, to come in and assist us and
6 kind of walk us through that process.

7 Q. Okay. Was Detective Ortega one of those
8 officers?

9 A. Charlie Ortega at that time, yes.

10 Q. Okay. And so what were you required to do if
11 you were investigating somebody or interrogating
12 somebody that was a juvenile?

13 A. We would have to take them down to the -- the
14 JIS section and have them interviewed and questioned
15 there.

16 Q. Was CAP following that procedure?

17 A. Yes. As best as possible, yes. Uh-huh.

18 Q. Was it your responsibility to make sure that
19 your investigators carried out that procedure under
20 the -- the department policy and the Family Code?

21 A. Yes. And that's why, if you notice, some --
22 through the case, Charlie Ortega was there kind of
23 overseeing what we did.

24 Q. So when you interacted with people from the
25 DA's office, were they also involved in compliance as to

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1 juvenile subjects?

2 A. Yes.

3 Q. I want to ask you about claims of misconduct by
4 your investigators, and we're going to look at three
5 incidents. I'm going to get Ms. Burke to put the first
6 one of those incidents up that you were involved in that
7 involved disciplinary issues about Alfonso Marquez.

8 MS. BURKE: Which one?

9 MR. DENTON: The first one on your list,
10 the PIR. Chronologically, the first one.

11 MS. BURKE: All right. Can you see this
12 okay?

13 THE WITNESS: Yes.

14 MS. BURKE: Okay.

15 THE WITNESS: I'm sorry. It's a little
16 better over here.

17 MR. DENTON: Make it just a little bit
18 smaller so we can see more of it on the screen.

19 Q. (BY MR. DENTON) Do you recognize this
20 incident?

21 A. Let me get a look at it.

22 Q. Go ahead. Get oriented to it.

23 A. Yes, I recognize it.

24 Q. All right. And it says "name of complainant."
25 It has your name up there at the top. Do you see that?

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1 A. Yes.

2 Q. Would you explain to the jury how you became a
3 complainant against Alfonso Marquez?

4 A. At that time, Alfonso Marquez was one of my
5 detectives, and he was driving a city vehicle, and he
6 got involved in a -- in a -- in an accident, and he had
7 another individual with him which was not a city
8 employee, so he was -- he was in that vehicle with him.

9 But because of the accident, because of the
10 unauthorized person in that vehicle, he -- there was a
11 complaint, and I went and did a cursory investigation
12 and found that Marquez should not have been involved in
13 that accident and should not have had a authori- --
14 unauthorized person in that vehicle --

15 Q. So --

16 A. -- at the time of the accident.

17 Q. So he was breaking the rules.

18 A. Absolutely.

19 Q. Okay. And so let's look at the bottom of that
20 sheet there on the screen, and it shows down at the
21 bottom that -- well, what does it say was the outcome on
22 that case?

23 A. Let's see. Well, my -- my recommendation was
24 forwarded to internal affairs for further investigation.
25 Lieutenant Saucedo at that time concurred and referred

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1 the -- concurred with my referral.

2 Q. Right.

3 A. And then the last one, I think that was
4 Chief Long who sustained the -- I don't know. I can't
5 read his writing, but he sustained the -- the
6 recommendation.

7 Q. All right. And do you know what the punishment
8 was on this one?

9 A. I think he was -- there was a suspension. I
10 don't know how many days.

11 Q. All right.

12 A. I think there was a suspension.

13 Q. And was that appropriate?

14 A. Yes.

15 Q. Okay. Now, this incident -- did this incident
16 cause you to have any questions or problems about
17 whether or not Alfonso Marquez, as a detective, was
18 honest or truthful?

19 A. I mean, no. I mean, he was -- he was caught
20 red-handed. I mean, I don't see where he would try to
21 avoid that. I mean --

22 Q. All right.

23 A. -- we were able to prove what happened, and
24 everything, and so we proceeded with the -- with the
25 incident report.

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1 Q. And what's the purpose of discipline like this
2 against a detective?

3 A. To show that he's not supposed to be doing
4 things that are inappropriate.

5 Q. Okay. All right. In the course of your
6 supervision of Alfonso Marquez and the other detectives,
7 did you initiate discipline or investigations every time
8 that you thought there was a policy violation?

9 A. Yes.

10 Q. Okay. Was that important to you?

11 A. It was.

12 Q. So let's look at the next one chronologically,
13 the next PIR, which I believe also is on Detective
14 Marquez. Take a look at this one, see if you recognize
15 it.

16 A. If you'll give me a minute.

17 Okay.

18 Q. Do you recognize that one?

19 A. Yes, I do.

20 Q. All right. And another one that you had
21 initiated as a complainant?

22 A. Right.

23 Q. All right. Let's look down at the bottom of
24 that one, see what the disposition is. What does that
25 say the outcome was?

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1 A. Again, it was Chief Long, and he sustained the
2 written reprimand.

3 Q. Now, there's no suspension here. Did you agree
4 with that, that a reprimand was appropriate?

5 A. And that's part of the discipline. Yeah, I
6 agreed with the written reprimand. Yeah.

7 Q. Okay. What is the point? What does a written
8 reprimand accomplish?

9 A. It -- it's a document that documents that you
10 were out of policy and -- and it goes into your file.

11 Q. Okay.

12 A. So it's -- it's a very -- it's a form of
13 discipline, but not a very hard discipline.

14 Q. Okay. Let's look at the third PIR that we have
15 and also against Detective Marquez. And this one's in
16 '93.

17 A. Okay.

18 Q. This one's actually -- date and time of the
19 incident's the month before the England/Lazo murders
20 take place, also --

21 A. All right.

22 Q. -- in 1993, following month, if I remember
23 correctly.

24 A. Yes. That's correct.

25 Q. Do you recognize this one?

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1 A. Let me -- let me read up a little bit.

2 Yes, I do.

3 Q. Okay. Let's look at the disposition, then, on
4 this incident. This incident involves failure to
5 process evidence correctly; is that right?

6 A. Right. Okay.

7 Q. All right. Was this investigated by IA or by a
8 supervisor?

9 A. It was by us.

10 Q. Okay. At the supervisory level --

11 A. Yes.

12 Q. -- within the CAP unit.

13 A. That's correct.

14 Q. All right.

15 A. Yeah, the narcotics, the lab technician, had
16 come in and -- and asked him for it and he -- he said,
17 "Hey, it's in my desk. I forgot to turn it in."

18 He came in and told me. I said, "Hey,
19 that's a violation." You're not supposed to -- you're
20 supposed to turn it in as soon as you -- you have the
21 opportunity to turn it in, and he failed to do so and
22 he -- it was still in his desk.

23 Q. And was he forthright about what happened?

24 A. Yeah. Absolutely.

25 Q. Did he lie about it in any way?

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1 A. No.

2 Q. Okay.

3 A. He walked over to his desk, opened the drawer,
4 and it was right there.

5 Q. All right. So he was wrong, and he admitted
6 it.

7 A. Absolutely.

8 Q. Okay. And there was -- and the suspension here
9 was --

10 A. And then -- and follow up with -- with the
11 investigation, the -- the incident report, and it was --
12 as you can see, it was sustained by my lieutenant,
13 Saucedo, Captain DeAngelis, which was one of our
14 captains. And you asked me about the captains. He was
15 one of our captains at that time. And then it was
16 sustained by DC Long for a three-day suspension.

17 Q. Okay. So was that an appropriate suspension?

18 A. Yes, I think so.

19 Q. Did you feel like that was reinforcing the
20 rule --

21 A. Absolutely.

22 Q. -- that needed to be followed?

23 A. Not -- not just by Marquez, but by the entire
24 CAP unit.

25 Q. Okay. Did that get the word out?

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1 A. Yes.

2 Q. Okay. All right. So now, do you remember,
3 other than these three incidents by Detective Marquez,
4 initiating or implementing any discipline against any of
5 the officers that are named in this litigation: Earl
6 Arbogast, Carlos Ortega, Scott Graves, Alfonso Marquez,
7 Kimmett Bellows, Detective Loya, and Detective Ray
8 Sanchez?

9 A. No.

10 Q. Any others?

11 A. No. And -- and the reason being is the others
12 were not my direct subordinates.

13 Q. Okay.

14 A. They were -- they were assigned to somebody
15 else, or they were assigned to another unit, so -- but
16 Marquez fell under me, so that's why I -- when it came
17 up to some -- him doing something inappropriate, then I
18 would -- I would have to handle it.

19 Q. All right. Now, with respect to the
20 individuals investigating the -- the murders that are
21 involved in this case, Scott Graves and Earl Arbogast,
22 Kimmett Bellows, were they all working for you?

23 A. No.

24 Q. Okay. But you were supervising this
25 investigation?

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1 A. Correct.

2 Q. All right.

3 A. And they were a part of that investigation.

4 Q. Okay. Did you have any reason at that point in
5 time -- in 1993 -- to believe that those individuals had
6 any previous history or pattern of not following
7 policies and protocols?

8 A. Not that I know of, no.

9 Q. Did you have any reason to believe that they
10 were not following the law in terms of carrying out a
11 lawful investigation of Daniel Villegas or any other
12 suspect?

13 A. No.

14 Q. I want to talk to you a little bit about what
15 happened with the files in terms of your review and
16 approval. There's an issue that's been raised about
17 supervisory oversight and approval on reports. Tell the
18 jury how the process was going on in 1993. How were you
19 working on the materials that were being developed in
20 this investigation?

21 A. Well, a lot of the times when detectives had a
22 case, they would -- they would -- they were entering
23 everything electronically into the -- the -- what
24 they -- the so-called RMS system, which is a record
25 management system. And they would do that.

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1 But CAP, a major case like this that --
2 that's going to be presented into the district
3 attorney's office, they -- they would have to make a
4 hard copy, make a binder, a case binder, that would be
5 put together.

6 Once that was completed and they finalized
7 it and they put a presentation statement on it,
8 preparing it to go to the -- the DA's office, then they
9 would bring them in to me or to any supervisor, and we
10 would go over it, make sure that everything was there,
11 and it was as complete as -- as possible.

12 Once that was done and we verified that
13 everything was there, then it would be transferred into
14 the -- the district attorney's office, their intake
15 office.

16 Q. And who was -- whose responsibility was it,
17 finally, to approve that notebook?

18 A. The supervisors.

19 Q. Would -- who was that? You?

20 A. Me, the other supervisors in the office.

21 Q. Okay. So on this one, this was your case.

22 A. Yes, that's my case.

23 Q. All right. So before that notebook went to the
24 DA's office for presentation in this Daniel Villegas
25 case, it had to come through you.

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1 A. Yes.

2 Q. And what did you do? What was the level of
3 your review of that notebook before it went to the DA?

4 A. I had to make sure that everything was -- was
5 there and everything was as complete as possible. Once
6 we were -- we were satisfied that that was there, we
7 didn't have any other questions, we would send it out.

8 Q. Now, as the -- as the reports and the
9 supplements, statements, and other things were coming
10 together, did you see those as they were being
11 developed?

12 A. Not -- not always, no, because we would wait
13 until everything was complete, and then we would go over
14 it. We would review it, and then send it up.

15 Q. All right.

16 A. A lot of times, like I say, they were putting
17 them into the system, but I -- I wasn't getting a hard
18 copy of it. The hard copy was not until the -- the
19 end --

20 Q. Okay.

21 A. -- until the binder was complete.

22 Q. And from time to time, did you review portions
23 of the investigation --

24 A. Yeah, absolutely.

25 Q. -- on the system?

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1 A. Absolutely.

2 Q. So you've earlier told the jury about the daily
3 meetings that take -- took place. What was the level of
4 interaction about the reports, the supplements, and the
5 statements that were being taken at that daily meeting?

6 A. Uh-huh.

7 Q. How would that work?

8 A. We would go over them to see what -- what
9 needed to be done, and then we completed -- now, some of
10 the statements needed to be notarized, and those would
11 come to me, and we would go over them, discuss them,
12 make sure that they were correct and everything. We
13 would stamp them and notarize them and give them back to
14 the detective.

15 But those were the -- the -- the sworn
16 statements that we would have to notarize. The other
17 supplemental documents, they would be after -- after
18 they were put together in the binder, that's when we
19 would review them.

20 Q. All right. So if something came up in the
21 meeting about a statement or a report or something else
22 that you had interest in or somebody asked a question,
23 what was your access? How would you go take a look at
24 it?

25 A. Just saying, "Let me have a copy. Let me see

1 it."

2 Q. Okay. So were you -- what percentage of the
3 time were you working with paper copies as opposed to on
4 the computer in those days?

5 A. I would say 85, 90 percent of the time.

6 Q. I want you to tell the jury about the
7 responsibility that you had to make sure that evidence
8 for either guilt or innocence was contained in the
9 investigations you were developing. Can you explain
10 that to the jury?

11 A. Anytime there was any type of evidence,
12 whether -- whether for or -- or against the -- the --
13 the defendant, we -- we would have to present it. I
14 mean, it has to go in.

15 Q. Okay. How did you learn that? How did you
16 come to know that?

17 A. By the different trainings that we'd had of --
18 on inculpatory and exculpatory evidence. I mean,
19 that -- that's taught to us from the beginning.

20 Q. All right. When you did the final review of
21 those materials to go to the DA's office, was that a
22 part of your review?

23 A. Absolutely.

24 Q. When you interacted with the DA on a case
25 submission, how important to them was that?

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1 A. It was very important, make sure that
2 everything was there.

3 Q. Okay.

4 A. Absolutely. Whether it was for or against,
5 yeah.

6 Q. Do you know what the DA's policy was about
7 defense counsel having access to your complete
8 investigation?

9 A. Yeah. They -- they would -- they would make
10 sure that everything that we had would be shared with
11 the defense attorney.

12 Q. And did you know that going in?

13 A. Yes. And there were some occasions where there
14 were -- if they needed something added or -- or
15 requested additional information, then they would ask
16 us, we would get it and -- and submit it to them, and
17 they would share it with the defense attorneys.

18 Q. So I'd asked you questions about whether or not
19 you were aware of any improper conduct like generally.
20 Prior to the murder investigation we're talking about in
21 1993, had you ever heard complaints from any source
22 about --

23 MR. BRITTAIN: Excuse me. Lowell, I
24 apologize. Jeep got kicked out of the depo and --

25 MR. DENTON: You bet.

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1 MR. BRITTAIN: -- he needs somebody to let
2 him back in.

3 MR. DENTON: All right. Thank you, sir.
4 Counsel, appreciate that.

5 All right. Are we all back on? Is
6 everybody back on?

7 MR. JEEP DARNELL: I'm here.

8 MR. DENTON: All right. Thank you. I will
9 proceed.

10 Q. (BY MR. DENTON) I want to ask you to explain
11 to the jury -- are you familiar with what's known as a
12 motion to suppress evidence --

13 A. Yes.

14 Q. -- in a criminal case?

15 A. Uh-huh.

16 Q. Tell the jury what that is.

17 (Indiscernible.)

18 MR. JEEP DARNELL: Dad, mute yourself.

19 (Indiscernible.)

20 MR. DENTON: Somebody -- somebody has
21 something in the background. Can we please mute it?

22 MS. BURKE: Ginger, can you mute, please?

23 MR. DENTON: All right. There we go.

24 Q. (BY MR. DENTON) So I was asking you about a
25 motion -- motions to suppress in defense cases. Are you

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1 familiar with that?

2 A. Yes.

3 Q. Tell the jury what that is.

4 A. Well, that's when the defense attorney wants to
5 keep something out from going into the -- to the case,
6 like a confession, like evidence, a statement. So
7 they -- they -- they want to suppress it. They want to
8 keep it out.

9 Q. All right. And so was your office and your
10 detectives regularly involved in those kinds of court
11 proceedings?

12 A. No. No. That was the district attorney's
13 office.

14 Q. All right. But did your officers, your
15 detectives, did they testify in those proceedings?

16 A. Yes.

17 Q. All right.

18 A. Yeah.

19 Q. How did you hear or find out about the outcomes
20 of those proceedings at the courthouse?

21 A. The -- through the district attorney's office.
22 "Hey, this -- this item was suppressed," or, "This was
23 kicked out," or what have you, so they -- they would let
24 us know.

25 Q. All right. And was that by phone call or in

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1 the meetings at the office, or how did that happen?

2 A. Either/or. Either/or.

3 Q. When a case went up and there was a ruling,
4 either a jury ruling or a judge ruling, did you get that
5 feedback from the DA's office?

6 A. Yes.

7 Q. Did you have after-action reports or reviews
8 with them on the cases you had submitted?

9 A. Yes. Absolutely.

10 Q. Now, from that interaction at the time of this
11 incident in 1993, were you aware of any judicial rulings
12 by the courts that had found any of your detectives
13 involved in coercion or abuse of suspects?

14 A. No.

15 Q. Had you -- had you ever heard complaints
16 against Alfonso Marquez engaging in a continuing pattern
17 of either verbal coercion or physical coercion to get
18 statements or -- or confessions?

19 A. Not that I recall, no.

20 Q. Any of these other officers that I've named?

21 A. No.

22 Q. If you had ever heard of that kind of a ruling
23 by a court, what would have been your responsibility?

24 A. To keep track of it and make sure that they
25 didn't get -- do that while doing one of our cases or

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1 working one of our cases.

2 Q. Would you have kept anybody in your unit if
3 they were engaging in those kind of activities?

4 A. No.

5 Q. I'm going to ask Ms. Burke to put up on the
6 screen an affidavit that you signed in a case later in
7 2008, and it involved the conviction of an individual
8 named Alejandro Hernandez. Do you remember that
9 incident?

10 A. Yes.

11 Q. Do you recognize this affidavit? Up at the
12 top -- let's go to the top. Do you see that it shows
13 that it was filed in 2008? Now, you were out of the PD
14 at this time, right?

15 A. That's correct.

16 Q. All right. So I guess somebody contacted you
17 for your testimony by affidavit?

18 A. Yes.

19 Q. Do you remember who it was?

20 A. Not right offhand, no.

21 Q. Okay. Could it have been Duane Baker, or do
22 you know?

23 A. It could have been Duane Baker, yes.

24 Q. All right. So let's look at what this
25 affidavit says. Do you remember what this -- this case

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1 was about and why you were called upon to testify by
2 affidavit about your involvement in this murder
3 investigation?

4 A. I would assume that it's some -- some sort of
5 homicide case --

6 Q. Okay.

7 A. -- that -- that had been worked on by some of
8 the people that I recognize on the affidavit.

9 Q. So just like today, you were called back in to
10 ask you questions about something that happened while
11 you were a sergeant there --

12 A. That --

13 Q. -- right?

14 A. That is correct. Yes.

15 Q. All right. So I want you to -- we're going to
16 page down here to page 3 in that affidavit, right there
17 at the top. You see it says, "I arrived at the location
18 of where the body was found," and it has a time and so
19 forth?

20 A. Yes.

21 Q. How common was it that instead of being in the
22 office, going to meetings, and looking at paperwork,
23 that you were out in the field, like this testimony
24 shows here?

25 A. Any time that there was a homicide case and we

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1 were called out as a unit, the dispatch would -- would
2 request a CAP unit, but they would contact the
3 supervisors, me or one of the other supervisors.

4 Q. Okay.

5 A. And then we would then get the detectives
6 together and -- and -- and send them out there. When
7 they -- we would arrive, then they would arrive, so we
8 would all be out there at the -- at the different
9 scenari- -- the scene, so...

10 Q. All right. And then farther down there, about
11 the sixth line maybe, it says, "Detective Tony Tabullo
12 arrived at about the same time I did, and then
13 Lieutenant Paul" --

14 A. That's --

15 Q. -- "Saucedo later"?

16 A. The lieutenant would also show up to many of
17 the -- the homicide cases.

18 Q. Okay. So it was common for you to be in the
19 field on the scene.

20 A. Absolutely.

21 Q. All right. Your testimony here in this
22 affidavit talks about -- it says uniformed EPPD officers
23 at the scene were giving you information. Do you see
24 that at the --

25 A. Yes. Uh-huh.

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1 Q. -- bottom of that?

2 So are your officers not uniformed?

3 A. No. We are -- we are plainclothes.

4 Q. Okay. And so are those patrol officers it's
5 talking about there?

6 A. Yes.

7 Q. All right.

8 A. Uniformed officers.

9 Q. Down at the bottom of that, it then says, "Some
10 of the CAP detectives on the scene were instructed to go
11 to the CAP office located at headquarters to interview
12 the numerous transients that had to be picked up."

13 A. Right.

14 Q. So who was -- who was directing the process of
15 interviewing people and obtaining evidence on the scene?
16 Was that your role?

17 A. Me, yes.

18 Q. Okay. Is that your purpose for being at this
19 scene?

20 A. Correct.

21 Q. All right. It then continues in the next
22 paragraph talking about the supplement of Detective Sal
23 Dominguez, and I'd asked you earlier about the
24 supplements and so forth. In the course of the
25 activities that you're testifying about here, were you

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1 going to see that supplement within a day or two, or
2 were you not going to see it until later on?

3 A. Probably until later on.

4 Q. Okay. And so just like in testifying in court,
5 this affidavit that you put together in 2008, it's
6 reconstructing what you remembered by reading that
7 paperwork, right?

8 A. Correct. Yes.

9 Q. And it says there that Detective Dominguez and
10 you went to a location and notified the brother of the
11 victim.

12 A. Uh-huh.

13 Q. Is that right?

14 A. That's correct.

15 Q. So that's the notice to next of kin question.

16 A. Correct.

17 Q. All right. And -- and is that an important
18 responsibility for law enforcement?

19 A. It is.

20 Q. That's one of the incidents that Detective
21 Marquez failed to do.

22 A. Correct.

23 Q. And -- and got written up for it.

24 A. Yes.

25 Q. On page 4, I believe it is -- let's see here.

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1 There we go. It says, "Notified that they had located a
2 transient at 4427 Titanic. Detective Dominguez and I
3 went to that location." So it looks like you are, at
4 least at this point, actively involved in follow-up --

5 A. Right.

6 Q. -- on evidence; is that correct?

7 A. Correct.

8 Q. Tell the jury how important that was in terms
9 of you making sure that these investigations were
10 complete, and what was your purpose?

11 A. Well, again, it's to supervise the -- the
12 activities out in the field, make sure that we are
13 talking to the -- all the witnesses or possible
14 witnesses, and any evidence that was located, make --
15 make sure it was -- it was properly tagged and turned
16 in.

17 Q. Okay.

18 A. So just to kind of oversee --

19 Q. All right.

20 A. -- the -- the crime scene and make sure that
21 we -- we didn't oversee anything or we didn't pass by
22 anything.

23 Q. Okay. In the next paragraph there, you'll
24 see -- let me see where we are, where it was.

25 "Reviewing EPPD case number" -- it's got the case number

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1 there, and it says "it appears that during our morning
2 meeting." Is that the meeting that you had --

3 A. That's --

4 Q. -- described before?

5 A. That's correct.

6 Q. Okay. That you assigned Detectives Ruiz,
7 Guillermo Martinez to attend the autopsy and some other
8 people to go back to the scene of the crime to look for
9 further evidence.

10 A. That is correct.

11 Q. Is that characteristic of what you were doing
12 in all these investigations?

13 A. Yes, it is.

14 Q. And is that the same kind of activities that
15 you carried out in connection with the investigation of
16 the Lazo and England murders?

17 A. Correct. Yes.

18 Q. And I had asked you a number of questions about
19 the court proceedings and feedback that you got, and I
20 believe you testified that -- that you don't remember
21 being aware of any judicial rulings or determinations
22 about coercion of confessions or statements.

23 A. That is correct.

24 Q. Did you also get feedback from the DA's office
25 about whether or not a case that went up and -- and was

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1 convicted, whether or not those convictions were ever
2 reversed on appeal by the appellate courts?

3 A. No. I mean --

4 Q. Did the DA give you feedback on that or not?

5 A. Not -- not that I recall. We would get it
6 from -- you know, somebody had been at the courts, hey,
7 they -- they reversed this, or they did that, and then
8 we would ask the DA's office, but that was very, very
9 seldom.

10 Q. Okay. And that was my next question to you.
11 How often did the cases that you had successfully
12 obtained a conviction in get reversed?

13 A. Not -- not very often. It was very, very
14 seldom that it happened.

15 Q. So were you getting any feedback or impression
16 that the work you were doing was not being in compliance
17 with the standards that the courts required?

18 A. No.

19 MR. DENTON: Let's look at the affidavit in
20 that same case of Detective Torreon, Ms. Burke, if
21 you'll put that up.

22 THE REPORTER: I think we may have lost
23 her.

24 MR. DENTON: Right.

25 THE REPORTER: Can we go off the record?

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1 MR. DENTON: Yeah. Let's go off the record
2 just a second, and then I'll make sure she's back on.

3 THE VIDEO TECHNICIAN: Off the record at
4 9:52 a.m.

5 (Break taken.)

6 THE VIDEO TECHNICIAN: This is the
7 videographer. I am recording again, and we are back on
8 the record at 9:59 a.m. You may continue.

9 MR. DENTON: Ms. Burke, if you'll put up
10 the affidavit of Detective Torreon in the Hernandez
11 incident. I'm sorry. I -- I said "Torreon." It's
12 "Terrones."

13 THE WITNESS: Terrones.

14 MR. DENTON: Yes. Terrones.

15 Q. (BY MR. DENTON) All right. So this is another
16 affidavit in that same case that you provided testimony
17 on for Alejandro Hernandez. If we'll look down in that
18 affidavit -- and I'm going to ask you about your
19 personal knowledge about some of the statements here.
20 Look down to page 4.

21 MR. DENTON: That's not the page numbered
22 4. That's 3. There you go.

23 Q. (BY MR. DENTON) Now, right in the middle of
24 that paragraph, it says, "Sergeant Ocegued- -- Ocegueda
25 assigned me as the case agent in this case, which means

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1 I was the lead investigator responsible for assembly,
2 organization of supplemental reports, witness
3 statements" -- and so forth -- "and presenting the case
4 to the district attorney." Do you see that testimony
5 there from Detective Terrones?

6 A. Yes.

7 Q. And what is your personal recollection of that?
8 Do you remember that you assigned him as the case
9 agent --

10 A. Yes, I do.

11 Q. -- in the Hernandez case?

12 A. Uh-huh. And that's -- that's the process of
13 putting together the binder on a case to get ready for
14 presentation.

15 Q. Okay. And so that was going to be my question
16 to you. What is the case agent's role, first of all, if
17 you'll describe that for the jury?

18 A. He -- he's the one that -- he's assigned the
19 case as -- and takes the lead in making sure that
20 everything is put together in the binder. Any
21 statements, supplements, evidence, chain of custody,
22 all -- all that gets sent in to him. Even though
23 somebody else might do it, they submitted them to him,
24 and he puts it all together, puts it in -- in a binder,
25 and then that -- that's when it's ready.

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1 He's the one that also puts together the --
2 they call it "the presentation statement" on the front
3 of the case, which means, okay, this case is ready to
4 go.

5 Q. All right. And what interaction did you
6 typically have on these murder cases with making sure
7 that was being done right?

8 A. Well, again, I would make the assignments.
9 They would take and -- and start preparing everything.
10 Once it was completed, they would bring it to me. We
11 would review it, make sure that everything was there, go
12 through it, and then once we were satisfied, yeah,
13 it's -- it's ready, send it in.

14 Q. Okay. And was it done the same way on the
15 Daniel Villegas matter?

16 A. Yes.

17 Q. Now, let's look down at page 10 in this
18 Terrones affidavit. Are we on page 10?

19 A. Uh-huh.

20 Q. Yeah, there we are.

21 So it says here -- this was puzzling to
22 me -- "On May 26, '94, then CAP Sergeant Dwain Johnson
23 reviewed and approved the case to be presented to the
24 office of the DA." So when you had assigned the case to
25 Terrones as the case agent, why did a different sergeant

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1 approve it to go to the DA?

2 A. I might have been out of the office. I might
3 have been out on vacation. I might -- I might have been
4 on leave. Whate- -- whatever the case --

5 Q. Okay.

6 A. -- I wasn't available, and so he -- he's a
7 supervisor just like --

8 Q. Right.

9 A. -- me, and they would take the case to him,
10 say, "It's ready for presentation."

11 Q. Okay.

12 A. And he would review it, do the same thing that
13 I would do, review it and make sure everything was
14 there, checked off on it. Boom, it's gone.

15 Q. Okay.

16 A. And I would do the same thing for some of his
17 cases when he wasn't available, so, I mean, we were kind
18 of interchangeable there.

19 Q. All right. Down below there now, the next
20 paragraph, it says, "On presenting the case to Assistant
21 District Attorney Karen Shook for her review, I was
22 advised to obtain a statement from Dee Stewart as an
23 additional part of the investigation." You see that?

24 A. Uh-huh.

25 Q. Now, tell the jury what -- what -- what your

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1 knowledge and recollection is about how this process
2 would work. As I understand this, what you've described
3 is this notebook is complete, and you think it's ready
4 to go.

5 A. Right.

6 Q. In this case, Dwain Johnson had performed that
7 approval.

8 A. Correction [sic]. Yes. Correct.

9 Q. When it went to the DA, the DA, according to
10 this testimony, was advised to take a statement from Dee
11 Stewart. Do you remember that happening in this case?

12 A. I don't actually remember, but the process is,
13 when it gets to the DA's office, they have to check it
14 in, so it's -- it's -- what do they -- they had a name
15 for it -- intake office.

16 Q. Okay.

17 A. So they go in there, and then it's assigned to
18 whoever's going to take over the case, either -- at this
19 time, it was going to be Karen Shook. She reviews it or
20 has some -- one of her attorneys review it and says,
21 "Hey, I think we're missing a statement for so-and-so."

22 And then he calls, "Hey, we need a
23 statement from so-and-so."

24 They would call the office, and then that's
25 how we would say, "Okay. Send -- get a detective. Send

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1 him out there. Get a statement."

2 Q. So would it be accurate to say that your
3 investigative file is not ultimately complete even after
4 it goes to the DA's office?

5 A. No, it's not because, not only do we review it,
6 they review it.

7 Q. Okay.

8 A. And if they see that we need something else or
9 it's lacking something, then they get back to us and
10 then we -- we correct that.

11 Q. And so Detective Torreon had testified here
12 that that statement was taken. Then it says, "I was
13 advised by Karen Shook or Sergeant Ocegueda" --

14 A. Yeah.

15 Q. -- "that a statement needed to be obtained from
16 Brandon Hamilton."

17 A. Right. And, here, the process would be that --
18 that the district attorney's office -- in this case,
19 Karen Shook -- would call us, call me, and say, "Hey,
20 Pete, I need a statement from so-and-so," or, "This is
21 what we're missing. See if you can find it and bring
22 it" --

23 Q. Right.

24 A. -- "in to us." So then I -- I -- I would get
25 Terrones or -- or one of them to do it.

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1 Q. Now, do you remember from this case that
2 Brandon Hamilton was an exculpatory witness, in the
3 sense that Hamilton was also somebody who confessed to
4 this murder?

5 A. Yeah. Exactly. And I think that's -- that
6 statement was taken from -- by Dominguez, Sal Dominguez.

7 Q. Okay. And that's from your personal
8 recollection of this --

9 A. Yes.

10 Q. -- Hernandez case.

11 A. Exactly.

12 Q. All right.

13 A. And, again, I think Sal came in and says, "I
14 don't see anything where -- where he's connected to it.
15 He's -- he's lying about this, or he's making it up," or
16 what have you.

17 I says, "Oh, you know, then don't take a
18 statement. Just kick him out. You know, get rid of
19 him."

20 Q. Okay.

21 A. I mean, if he's not going to add nothing to it,
22 then we don't need him.

23 Q. All right.

24 A. So then -- then -- but they said, "Ah, well,
25 let's just get a statement from him to the fact as to

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1 what he says and go from there."

2 Q. And so was the -- was the -- did the file
3 already reflect that Brandon Hamilton was not believed
4 to be the perpetrator by CAP?

5 A. I think that's what was -- Dominguez's
6 statement was, yeah.

7 Q. Okay. All right. So that statement was
8 obtained at the request of the DA's office.

9 A. Correct.

10 Q. All right. And then it also says here just
11 below that, "Sergeant Ocegueda also wanted body fluids
12 and blood taken from Brandon Hamilton."

13 A. Uh-huh.

14 Q. Do you remember that? Do you remember doing
15 that?

16 A. I -- I -- I don't recall, but if they're saying
17 I did, then, you know, I did.

18 Q. And what would be the purpose in getting body
19 fluids and blood from Brandon Hamilton?

20 A. I think that was something that -- that Karen
21 said, "If -- if you're able to get body fluids and --
22 and -- and -- and blood samples from him, get it from
23 him, just to -- so we can" --

24 Q. Okay.

25 A. -- "make sure that we get, you know" --

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1 Q. All right.

2 A. -- "do everything," so we did it.

3 Q. All right. And --

4 A. And if we weren't able to, well, we wouldn't --
5 we wouldn't do it.

6 Q. And is that a part of getting evidence that's
7 both for proof of guilt or proof of innocence?

8 A. That's correct. Yes.

9 Q. As to whoever the indicted individual is.

10 A. Yes.

11 Q. Tell the jury a little bit about the CAP office
12 space and how it was set up in the -- in the context of
13 the allegations that people were intimidated and hit and
14 physically abused, and yelling and screaming was all a
15 part of this getting a confession process. In 1993, did
16 you believe that was likely or possible in that unit?

17 A. It would be very unlikely that that would
18 happen.

19 Q. Why?

20 A. And the reason being is that the -- the -- the
21 office is -- is -- it houses several -- numerous
22 detectives, a couple of receptionists -- well, one
23 receptionist and an assistant, office assistant, that --
24 that helps us there with -- she's kind of the
25 lieutenant's secretary.

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1 Q. Uh-huh.

2 A. So, I mean, it's very cramped. The detectives'
3 working areas are -- are cubicles that you can see over.
4 I mean, that's just how -- maybe, what, five-feet-high
5 walls, and they're part- -- partitions. But it's very
6 cramped. It's very small. There are several interview
7 rooms, but they're -- they're kind of right across the
8 hallway from the sergeants' offices, so -- I mean,
9 and --

10 Q. So how many -- how many feet from the
11 sergeant's office?

12 A. Not more than four feet.

13 Q. Okay.

14 A. Yeah.

15 Q. So the interrogation room you're talking about,
16 does it have a two-way mirror?

17 A. The -- the interrogation room, it would be
18 across -- that one -- that one's a little bit further
19 from us. Maybe about 20 feet. But that's a little bit
20 bigger room, and it does have a two-way mirror on it --
21 a one-way mirror on it, yeah. One-way, yeah.

22 Q. Yeah, one-way mirror?

23 A. Yes. Yes.

24 Q. Okay. So he can see from one side, not the
25 other.

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1 A. Exactly.

2 Q. And the one that's next to the sergeant's
3 office, is that a small interview room?

4 A. That's a -- that's a small interview room,
5 small office-type interview room.

6 Q. Is the wall thin or soundproof?

7 A. It's thin.

8 Q. So if people were yelling and screaming at
9 people in there, would somebody next door know it?

10 A. Absolutely, yes.

11 Q. I've asked you about the motion to suppress and
12 the feedback you got about whether or not there was
13 misconduct by your personnel, and we've looked at this
14 Hernandez incident, which at an earlier point involved a
15 writ of habeas corpus.

16 Did you get feedback from the district
17 attorney's office when postconviction writs like habeas
18 corpus would come forward?

19 A. Huh-uh.

20 Q. Did your personnel go and testify at those
21 proceedings?

22 A. At -- at times, yes.

23 Q. Okay. And I'd asked you about Duane Baker
24 earlier. Were you involved, like you were in this case
25 here, with lawyers in civil cases for the city that

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1 would come to you for evidence and information?

2 A. Yes.

3 Q. From any of those postconviction cases or the
4 civil cases that you were a witness or a source of
5 information, by the time that you left the department in
6 2001, were you aware of any credible information that
7 CAP detectives were engaging in misuse or abuse of
8 suspects in the cases you were investigating?

9 A. No.

10 Q. Did you believe that there was any ongoing
11 pattern of misconduct in your unit?

12 A. Not to my knowledge, no.

13 MR. DENTON: Thank you very much, Sergeant.
14 I will pass you as a witness.

15 THE WITNESS: Thank you.

16 MR. ALMANZAN: This is Andy Almanzan on
17 behalf of Car- -- Defendant Carlos Ortega. We will
18 reserve our questions for this witness until the time of
19 trial. Thank you.

20 THE REPORTER: Does anyone have any
21 questions?

22 MR. JEEP DARNELL: No. We'll reserve as
23 well.

24 MR. MARTINEZ: No, ma'am.

25 MR. BRITTAIN: Eric Brittain. We'll

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1 reserve as well.

2 THE VIDEO TECHNICIAN: Okay. Thank you,
3 then.

4 Is that all, Ginger?

5 THE REPORTER: Yes.

6 THE VIDEO TECHNICIAN: Okay. Then this
7 concludes this deposition. Off the record at 10:12 a.m.

8 (Deposition concluded.)
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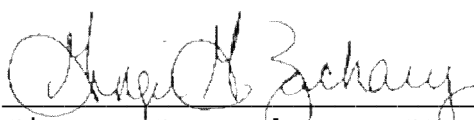
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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF EL PASO)

I, Ginger G. Zachary, Registered Professional Reporter, Certified Realtime Reporter, and Certified Shorthand Reporter in and for the State of Texas, hereby Certify that this transcript is a true record of the said proceedings, and that said transcription is done to the best of my ability.

Given under my hand and seal of office on
December 28, 2022.



Ginger G. Zachary, CSR, RPR, CRR
Texas Certification Number 5710
Date of Expiration: 1/31/2024
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221 North Kansas Street, Suite 505
El Paso, Texas 79901
Ph.: 915.542.3422



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CORRECTIONS AND SIGNATURE

WITNESS: PEDRO ANTONIO OCEGUEDA

DATE: DECEMBER 13, 2022

PAGE	LINE	CORRECTION	REASON
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1 I, PEDRO ANTONIO OCEGUEDA, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted above.
4

5 _____
6 PEDRO ANTONIO OCEGUEDA
7 THE STATE OF TEXAS)
8 COUNTY OF EL PASO)
9

10 Before me, _____, on this
11 day personally appeared PEDRO ANTONIO OCEGUEDA known to
12 me (or proved to me under oath or through
13 _____) (description of identity card or other
14 document) to be the person whose name is subscribed to
15 the foregoing instrument and acknowledged to me that
16 they executed the same for the purposes and
17 consideration therein expressed.

18 Given under my hand and seal of office this
19 _____ day of _____, _____.
20

21 _____
22 NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

23 My commission expires: _____
24
25

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ATTACHMENT 2-G



KENTUCKIANA
— COURT REPORTERS —

CASE NO. 3:15-CV-386

DANIEL VILLEGAS

VS

CITY OF EL PASO

DEPONENT:

HECTOR J. LOYA

DATE:

May 09, 2022



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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS, EL PASO DIVISION

DANIEL VILLEGAS,)
) Case No. 3:15-CV-386
Plaintiff,)
)
v.)
)
CITY OF EL PASO, et al.)
)
Defendants.)

REMOTE ORAL AND VIDEO RECORDED DEPOSITION OF

HECTOR J. LOYA

May 9, 2022

REMOTE ORAL AND VIDEO RECORDED DEPOSITION
OF HECTOR J. LOYA, located in El Paso, Texas, produced
as a witness at the instance of the Plaintiff, and duly
sworn, taken in the above-styled and numbered cause on
May 9, 2022, from 9:13 a.m. to 4:06 p.m., before Joseph
D. Hendrick, Certified Shorthand Reporter in and for
the State of Texas, reported by machine shorthand,
pursuant to Notice and the Federal Rules of Civil
Procedure and any provisions stated on the record or
attached hereto.

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<p>1 A P P E A R A N C E S (All Appearing Remotely via Zoom)</p> <p>2 FOR DANIEL VILLEGAS:</p> <p>3 Wally Hilke Quinn K. Rallins 4 LOEVY & LOEVY 311 North Aberdeen Street 5 3rd Floor Chicago, IL 60607 6 (312) 243-5900 hilke@loevy.com rallins@loevy.com</p> <p>7 FOR THE CITY OF EL PASO:</p> <p>8 Lowell F. Denton 9 DENTON, NAVARRO, ROCHA, BERNAL, HYDE & ZECH, P.C. 2517 North Main Avenue 10 San Antonio, TX 78212 (210) 227-3243 lfdenton@rampagelaw.com</p> <p>11 FOR HECTOR LOYA:</p> <p>12 Jeep Darnell 13 Jim Darnell Cris Estrada 14 JIM DARNELL, P.C. 310 N. Mesa, Suite 212 15 El Paso, TX 79901 915-532-2442 jedarnell@jdarnell.com jdarnell@jdarnell.com cestrada@jdarnell.com</p> <p>16 FOR CARLOS ORTEGA:</p> <p>17 Andrés E. Almanzán 18 MOUNCE GREEN MYERS SAFI PAXSON & GALATZAN P.C. 100 N. Stanton, Suite 1000 20 El Paso, TX 79901 (915) 541-1509 almanzan@mgmsg.com</p>	<p>1 INDEX</p> <p>2 Appearances 2</p> <p>3 HECTOR J. LOYA</p> <p>4 EXAMINATION BY MR. HILKE 9</p> <p>5 EXAMINATION BY MR. DENTON 201</p> <p>6 RE-EXAMINATION BY MR. HILKE 227</p> <p>7 Signature and Changes234</p> <p>8 Reporter's Certification236</p> <p>9 EXHIBITS</p> <p>10 NO. DESCRIPTION PAGE(S)</p> <p>11 EXHIBIT 2 Loya police reports 110</p> <p>12 EXHIBIT 6 2014 Handwritten case notes 121</p> <p>13 EXHIBIT 8 Villegas interview 143</p> <p>14 EXHIBIT 10 IA04-169 [Loya Discipline].pdf 161</p> <p>15 EXHIBIT 11 Myers Letter RE Wayne Williams 178 4.15.14.pdf</p> <p>16 EXHIBIT 13 Armendariz Police Reports.pdf 192</p> <p>17 EXHIBIT 14 0013079-0013113 - CAP Pages 210 from Procedures Manual 4-7-14 (4832-9652-4286.1).pdf</p> <p>18 EXHIBIT 15 0015388-0015508 - Criminal 211 Investigation Manual 4-18-14 (4821-7323-7246.1).pdf</p> <p>19 EXHIBIT 16 Photocopy of excerpt from 213 "Criminal Investigation and Confessions"</p>
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<p>1 FOR KENNETH BELLOWS:</p> <p>2 Eric M. Brittain WINDLE HOOD NORTON BRITTAIN & JAY LLP 3 Chase Tower, Suite 1350 201 E. Main Drive 4 El Paso, TX 79901 (915) 545-4900 brittain@windlehood.com</p> <p>5 FOR ALFONSO MARQUEZ:</p> <p>6 James A. Martinez MOUNCE GREEN MYERS SAFI PAXSON & GALATZAN P.C. 7 100 N. Stanton, Suite 1000 El Paso, TX 79901 8 (915) 541-1525 martinez@mgmsg.com</p> <p>9 ALSO PRESENT:</p> <p>10 Carlos Ortega Sydney Little, Online Video Technician</p>	<p>1 ONLINE VIDEO TECH: On record. My name is</p> <p>2 Sydney Little. I'm the online video technician and Joe</p> <p>3 Hendrick is the --</p> <p>4 MR. DARNELL: Are you able to --</p> <p>5 THE WITNESS: No, sir.</p> <p>6 MR. DARNELL: Hold on one second.</p> <p>7 ONLINE VIDEO TECH: I apologize.</p> <p>8 MR. ESTRADA: Can everybody hear me okay?</p> <p>9 ONLINE VIDEO TECH: Yes.</p> <p>10 MR. ESTRADA: Okay.</p> <p>11 ONLINE VIDEO TECH: All right. On record.</p> <p>12 My name is Sydney Little. I am the online video</p> <p>13 technician, and Joe Hendrick is the court reporter</p> <p>14 today representing Kentuckiana Court Reporters located</p> <p>15 at 730 West Main Street, Suite 101, Louisville,</p> <p>16 Kentucky 40202. Today is the 9th day of May 2022, and</p> <p>17 the time is 9:14 a.m. We are convened by video</p> <p>18 conference to take the deposition of Hector Loya in the</p> <p>19 matter of Daniel Villegas versus City of El Paso, et</p> <p>20 al., pending in the United States District Court for</p> <p>21 the Western District of Texas, El Paso Division, Case</p> <p>22 Number 3:15-cv-386.</p> <p>23 Will everyone but the witness please state</p> <p>24 your appearance, how you are attending and the location</p> <p>25 you are attending from, starting with plaintiff's</p>

<p style="text-align: right;">Page 6</p> <p>1 counsel.</p> <p>2 MR. HILKE: Good morning. Wallace Hilke</p> <p>3 for Plaintiff --</p> <p>4 (Unintelligible audio.)</p> <p>5 MR. HILKE: I'm sorry. I heard a little</p> <p>6 cross-talk there.</p> <p>7 MR. ESTRADA: There's no sound.</p> <p>8 MR. HILKE: Oh, I -- are you not able to</p> <p>9 hear me?</p> <p>10 MR. RALLINS: Sounds like it's from their</p> <p>11 end. I can hear you.</p> <p>12 MR. HILKE: Quinn, you are saying that you</p> <p>13 can't hear me right now?</p> <p>14 MR. RALLINS: No, I can.</p> <p>15 MR. HILKE: From -- from Detective Loya's,</p> <p>16 are you not able to hear me? It's all right, I'll make</p> <p>17 sure they've got this figured out before I can</p> <p>18 continue.</p> <p>19 MR. ESTRADA: There's no sound. Hmm.</p> <p>20 There it is. Okay. Can someone say something?</p> <p>21 MR. ALMANZAN: Testing. Testing. Sound.</p> <p>22 MR. HILKE: Also testing. More testing.</p> <p>23 MR. ESTRADA: Okay. There it is.</p> <p>24 MR. HILKE: Can you hear us now?</p> <p>25 MR. ESTRADA: Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 ONLINE VIDEO TECH: Thank you. All right.</p> <p>2 Mr. Loya, will you please state your name for the</p> <p>3 record and hold your ID up to the camera?</p> <p>4 THE WITNESS: It's Hector Loya, a Detective</p> <p>5 with the El Paso Police Department.</p> <p>6 ONLINE VIDEO TECH: Great. Thank you. Do</p> <p>7 all parties agree the witness is in fact Hector Loya?</p> <p>8 MR. DARNELL: Yes.</p> <p>9 MR. HILKE: Yes.</p> <p>10 ONLINE VIDEO TECH: Thank you.</p> <p>11 MR. BRITTAIN: Yes.</p> <p>12 ONLINE VIDEO TECH: Detective Loya, would</p> <p>13 you please raise your right hand for the court reporter</p> <p>14 to swear you in.</p> <p>15 THE WITNESS: (Complied.)</p> <p>16 THE REPORTER: Do you swear or affirm that</p> <p>17 the testimony you are about to give in this case will</p> <p>18 be the truth, the whole truth, and nothing but the</p> <p>19 truth, so help you God?</p> <p>20 THE WITNESS: Yes, I do.</p> <p>21 MR. HILKE: Sydney, are we good to go? Are</p> <p>22 we good to start?</p> <p>23 ONLINE VIDEO TECH: We are. You may begin.</p> <p>24 Thank you.</p> <p>25 MR. HILKE: Thank you.</p>
<p style="text-align: right;">Page 7</p> <p>1 MR. HILKE: Okay. Take two. This is</p> <p>2 Wallace Hilke. I'm one of the attorneys for plaintiff</p> <p>3 Daniel Villegas. I am attending remotely from our</p> <p>4 office in Chicago, Illinois. My colleague, Quinn</p> <p>5 Rallins is here with me as well, also attending from</p> <p>6 Chicago, Illinois.</p> <p>7 MR. ALMANZAN: And this is Andy Almanzan.</p> <p>8 I'm appearing for the defendant Carlos Ortega. The</p> <p>9 defendant himself, Carlos Ortega, is also participating</p> <p>10 by observation remotely. He and I are in El Paso,</p> <p>11 Texas.</p> <p>12 MR. DENTON: I'm Lowell Denton. I'm</p> <p>13 appearing for the City of El Paso. I am appearing from</p> <p>14 my office in San Antonio, Texas.</p> <p>15 MR. DARNELL: Jeep Darnell for Detective</p> <p>16 Loya.</p> <p>17 MR. BRITTAIN: Eric Brittain on behalf of</p> <p>18 defendant Kenneth Bellows from my office in El Paso,</p> <p>19 Texas.</p> <p>20 MR. MARTINEZ: Jim Martinez for Al Marquez.</p> <p>21 100 North Stanton in El Paso.</p> <p>22 THE REPORTER: Attorney Estrada?</p> <p>23 MR. ESTRADA: I apologize. Cris Estrada</p> <p>24 also with Jeep Darnell representing Detective Loya in</p> <p>25 our office at 310 North Main Street, El Paso, Texas.</p>	<p style="text-align: right;">Page 9</p> <p>1 HECTOR J. LOYA</p> <p>2 having been duly sworn, testified as follows:</p> <p>3 EXAMINATION</p> <p>4 BY MR. HILKE:</p> <p>5 Q. Good morning, Detective Loya.</p> <p>6 A. Good morning.</p> <p>7 Q. My name is Wallace Hilke. I'm one of the</p> <p>8 lawyers for Daniel Villegas and I am going to be asking</p> <p>9 you some questions today. Could you start by stating</p> <p>10 your name for the record, please?</p> <p>11 A. It's Hector Javier Loya.</p> <p>12 Q. Great. And could you spell that for the</p> <p>13 record, please?</p> <p>14 A. Hector, H-E-C-T-O-R. Javier, J-A-V-I-E-R.</p> <p>15 Loya, L-O-Y-A.</p> <p>16 Q. Okay. And Detective, how are you feeling</p> <p>17 this morning?</p> <p>18 A. Good.</p> <p>19 Q. Did you get a good night's sleep?</p> <p>20 A. Not really. But. That's normal.</p> <p>21 Q. That's fair enough. Have you ever been --</p> <p>22 had your deposition taken before?</p> <p>23 A. Nothing like this. Maybe insurance</p> <p>24 depositions for car accidents.</p> <p>25 Q. Okay. How long ago was that?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. It's been a while.</p> <p>2 Q. That's fair enough.</p> <p>3 A. More than probably 15 years.</p> <p>4 Q. So I'm going to go over a few ground rules</p> <p>5 today. As you know, there's a court reporter taking</p> <p>6 down everything we say just like we are in court so</p> <p>7 it's important just as you are doing now to speak</p> <p>8 loudly and answer verbally. Does that make sense?</p> <p>9 A. Yes.</p> <p>10 Q. And just like in court, if you make a</p> <p>11 gesture or a nod or an "uh-huh," they won't be able to</p> <p>12 get that so please give verbal answers to all of the</p> <p>13 questions. Does that make sense?</p> <p>14 A. Yes.</p> <p>15 Q. And we'll try to speak one at a time, so</p> <p>16 please let me finish my questions and I'll ask -- I'll</p> <p>17 let you finish your answers. Does that sound okay?</p> <p>18 A. Yes.</p> <p>19 Q. And I will try to ask questions that make</p> <p>20 sense, but if my questions don't make sense, can you</p> <p>21 please ask me to clarify them before you will answer</p> <p>22 them?</p> <p>23 A. Yes, I will.</p> <p>24 Q. And so likewise if you do answer a</p> <p>25 question, I am going to assume that you understood the</p>	<p style="text-align: right;">Page 12</p> <p>1 The audio is breaking up.</p> <p>2 MR. HILKE: Yeah, I'm sorry. Can you tell</p> <p>3 me where I left off?</p> <p>4 THE REPORTER: "And do you have any health</p> <p>5 conditions or take any medications that will affect</p> <p>6 your ability to give -- to testify today. Answer: No,</p> <p>7 I don't. Question: Is there any reason at all that</p> <p>8 you won't be able to give a true and -- that you won't</p> <p>9 be able to give true and honest testimony today."</p> <p>10 BY MR. HILKE:</p> <p>11 Q. Is there any reason at all that you</p> <p>12 wouldn't be able to give true and accurate testimony</p> <p>13 today?</p> <p>14 A. No.</p> <p>15 Q. And you understand that you're under oath</p> <p>16 presently, right?</p> <p>17 A. Yes, I do.</p> <p>18 Q. So just like in court, you are swearing to</p> <p>19 the truth of what you testify today. Does that make</p> <p>20 sense?</p> <p>21 A. Yes.</p> <p>22 Q. Have you ever given testimony under oath</p> <p>23 that you knew to be untrue at the time?</p> <p>24 A. No.</p> <p>25 Q. Have you ever given testimony under oath</p>
<p style="text-align: right;">Page 11</p> <p>1 question I asked. Is that fair?</p> <p>2 A. Yes, it is.</p> <p>3 Q. Great. And we can take breaks, you can</p> <p>4 also let me know if you need a break, but I will ask</p> <p>5 you if I've just asked you a question to answer that</p> <p>6 question before we go to a break. Is that fair?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And do you have any health</p> <p>9 conditions that affect your memory?</p> <p>10 A. No, I don't.</p> <p>11 Q. Did you take any medications that affect</p> <p>12 your memory?</p> <p>13 A. No.</p> <p>14 Q. And do you have any health conditions or</p> <p>15 take any medications that would affect your ability to</p> <p>16 give -- to testify today?</p> <p>17 A. No, I don't.</p> <p>18 Q. Is there any reason at all that you</p> <p>19 wouldn't be able to give a true and honest testimony</p> <p>20 today?</p> <p>21 A. No.</p> <p>22 Q. And you understand that you are under oath</p> <p>23 right now, correct?</p> <p>24 A. Yes.</p> <p>25 THE REPORTER: Can you all do that again?</p>	<p style="text-align: right;">Page 13</p> <p>1 that you later realized was untrue?</p> <p>2 A. Never.</p> <p>3 Q. Have you ever given testimony under oath</p> <p>4 that you later realized was incomplete?</p> <p>5 A. No.</p> <p>6 Q. Detective Loya, when did you join the El</p> <p>7 Paso Police Department?</p> <p>8 A. March 16.</p> <p>9 Q. And what was your first assignment when you</p> <p>10 joined the department? Oh. Detective Loya, I think we</p> <p>11 lost you for a minute there. Can you hear me now?</p> <p>12 A. Yes, I could.</p> <p>13 Q. Okay. Let me start again. When did you --</p> <p>14 when did you first join the El Paso Police Department?</p> <p>15 A. March 16, 2001.</p> <p>16 Q. And --</p> <p>17 MR. ESTRADA: Sorry, his Zoom crashed and</p> <p>18 it was asking too many questions.</p> <p>19 BY MR. HILKE:</p> <p>20 Q. I'm afraid you may get too many questions</p> <p>21 from me as well today, Detective. So when you started</p> <p>22 at El Paso Police Department, what was your first</p> <p>23 assignment?</p> <p>24 A. I was assigned to Central Patrol Division.</p> <p>25 Q. Okay. And what were your duties in Central</p>

<p style="text-align: right;">Page 14</p> <p>1 Patrol Division?</p> <p>2 A. Patrol officer, answer calls, take reports,</p> <p>3 traffic, stuff like that.</p> <p>4 Q. How long did you -- how long were you a</p> <p>5 patrol officer in the Central District?</p> <p>6 A. About nine years.</p> <p>7 Q. About nine years, okay. And so did you</p> <p>8 decide at some point to seek a transfer or promotion?</p> <p>9 A. That's correct.</p> <p>10 Q. And what transfer or promotion did you</p> <p>11 seek?</p> <p>12 A. I took a detective's test to promote.</p> <p>13 Q. Why did you want to be a detective?</p> <p>14 A. Something I've always wanted to do. I like</p> <p>15 the hours, too.</p> <p>16 Q. What's good about the hours?</p> <p>17 A. Monday through Friday, banker hours,</p> <p>18 attorney hours.</p> <p>19 Q. And what -- what made you interested in</p> <p>20 detective work?</p> <p>21 A. Just something I've always wanted to do. I</p> <p>22 didn't want to be on patrol the majority of my career.</p> <p>23 Q. Okay. And so when did you -- and did</p> <p>24 you -- were you, in fact, promoted to detective?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. All right. And after you were promoted to</p> <p>2 detective?</p> <p>3 A. I went to work at Central CID Unit.</p> <p>4 Q. Okay. And what were your dut -- and when</p> <p>5 was -- when did you start at the Central CID Unit?</p> <p>6 A. 2011-2012 give or take, sir.</p> <p>7 Q. All right. And what were your duties in</p> <p>8 the CID?</p> <p>9 A. Investigations.</p> <p>10 Q. Okay. So were there any specific kinds of</p> <p>11 cases that you handled?</p> <p>12 A. No. As a generalist, anything from simple</p> <p>13 assaults, someone stole my water hose, bicycles, a</p> <p>14 little bit of everything. Property. Family violence.</p> <p>15 Q. Would that include homicides?</p> <p>16 A. No, sir.</p> <p>17 Q. Okay. So what -- what didn't you</p> <p>18 investigate at CID?</p> <p>19 A. That. Not homicides, sir.</p> <p>20 Q. Not homicides. Were there other</p> <p>21 specialists, specialized crimes that wouldn't be</p> <p>22 something you would investigate then?</p> <p>23 A. Again, sir, it was more property stuff,</p> <p>24 simple assaults, family violence, theft, shoplifting, a</p> <p>25 little bit of everything.</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. And when you became a detective,</p> <p>2 what was your first assignment?</p> <p>3 A. I went -- I started at -- it's called</p> <p>4 Central CID Unit as a generalist detective.</p> <p>5 Q. I'm sorry. As a -- oh, we lost him again.</p> <p>6 MR. DARNELL: I'm sorry.</p> <p>7 MR. HILKE: That's all right. I'm sure</p> <p>8 we'll figure it out.</p> <p>9 MR. DARNELL: Could we go off record just</p> <p>10 while?</p> <p>11 MR. HILKE: Yes. We can go off the record</p> <p>12 for a minute, please.</p> <p>13 ONLINE VIDEO TECH: Of course. We are off</p> <p>14 the record. The current time is 9:27 a.m.</p> <p>15 (Break from 9:27 a.m. until 9:34 a.m.)</p> <p>16 ONLINE VIDEO TECH: We are back on the</p> <p>17 record for the deposition of Detective Hector Loya</p> <p>18 being conducted by videoconference. My name is Sydney</p> <p>19 Little. Today is May 9th, 2022, and the current time</p> <p>20 is 9:34 a.m.</p> <p>21 BY MR. HILKE:</p> <p>22 Q. Detective Loya, you were just saying that</p> <p>23 you're -- sorry, will you tell me again what was your</p> <p>24 first assignment as a detective?</p> <p>25 A. Patrol at Central.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. Is that kind of the starting ground for a</p> <p>2 new detective and sort of a generalist role like that?</p> <p>3 A. Correct.</p> <p>4 Q. And so did you, were you transferred at --</p> <p>5 to a -- to a different area as -- were you subsequently</p> <p>6 transferred to a different area as a detective?</p> <p>7 A. Yes.</p> <p>8 Q. And what was that?</p> <p>9 A. Crimes Against Persons.</p> <p>10 Q. Okay. When did you start at Crimes Against</p> <p>11 Persons -- I'm sorry.</p> <p>12 MR. HILKE: Jim, are you trying to say</p> <p>13 something? No. Just unmuted. Okay.</p> <p>14 BY MR. HILKE:</p> <p>15 Q. Were you -- when did you receive the</p> <p>16 transfer to Crimes Against Persons?</p> <p>17 A. 2013.</p> <p>18 Q. Okay. Do you happen to remember when in</p> <p>19 2013?</p> <p>20 A. I want to say in the summer 2013.</p> <p>21 Q. Was that a transfer that you requested?</p> <p>22 A. I did. It was more of they had open spots</p> <p>23 and you had to interview for it.</p> <p>24 Q. Why did you decide to interview for it?</p> <p>25 A. Something I've always wanted to work with,</p>

<p style="text-align: right;">Page 18</p> <p>1 Crimes Against Persons.</p> <p>2 Q. And interested in homicides specifically or</p> <p>3 just all crimes against persons?</p> <p>4 A. Crimes Against Persons.</p> <p>5 Q. Okay. And how long did you remain assigned</p> <p>6 to Crimes Against Persons?</p> <p>7 A. Just a little over three years.</p> <p>8 Q. Okay. Where did you go next?</p> <p>9 A. I'm currently with the White Collar Unit.</p> <p>10 Q. White Collar Unit. What do you investigate</p> <p>11 in the White Collar Unit?</p> <p>12 A. Financial crimes, forgeries, embezzlements.</p> <p>13 Q. And was that another decision you made to</p> <p>14 seek that transfer?</p> <p>15 A. Yes.</p> <p>16 Q. And why did you seek that transfer?</p> <p>17 A. It was time to leave CAP, Crimes Against</p> <p>18 Persons.</p> <p>19 Q. Why was that?</p> <p>20 A. Why was it time to go? There was a little</p> <p>21 incident that happened there that I needed to get out</p> <p>22 of there and they offered me a couple of assignments</p> <p>23 and financial crimes -- I'm sorry -- White Collar was</p> <p>24 one of them.</p> <p>25 Q. What kind of incident was it?</p>	<p style="text-align: right;">Page 20</p> <p>1 knew him as Ray.</p> <p>2 Q. So when did you first interact with Michael</p> <p>3 Lara?</p> <p>4 A. When did I inter -- I knew, I -- to work</p> <p>5 with him, I'd known him for a while before I went to</p> <p>6 Crimes Against Persons.</p> <p>7 Q. Okay. And did you know him from before the</p> <p>8 department?</p> <p>9 A. No, sir.</p> <p>10 Q. And had you had any interactions with him</p> <p>11 before you joined Crimes Against Persons?</p> <p>12 A. Just a hi and bye professional. That's</p> <p>13 about it.</p> <p>14 Q. Okay. So tell me about did you -- did you</p> <p>15 work on cases with him in Crimes Against Persons?</p> <p>16 A. Yes, I did.</p> <p>17 Q. And tell me -- tell me what -- what caused</p> <p>18 the conflict that your -- or the incident that you are</p> <p>19 talking about?</p> <p>20 A. There was a case that we had worked, I was</p> <p>21 actually testifying on a case about 2016, and I said</p> <p>22 stuff that I shouldn't have said.</p> <p>23 Q. What do you mean by that?</p> <p>24 A. I was -- I had already been sworn in and</p> <p>25 then I testified on the case and then a couple of weeks</p>
<p style="text-align: right;">Page 19</p> <p>1 A. It was a -- I -- I had some issues with</p> <p>2 some of the detectives working there. They didn't want</p> <p>3 to work with me anymore.</p> <p>4 Q. How many detectives?</p> <p>5 A. Maybe one or two didn't feel comfortable</p> <p>6 working with me.</p> <p>7 Q. And how many detectives in total were in</p> <p>8 Crimes Against Persons when you left?</p> <p>9 A. Gosh, more than 20, I guess, if I had to</p> <p>10 guess.</p> <p>11 Q. Who are the detectives who you had trouble</p> <p>12 working with you?</p> <p>13 A. Where are they?</p> <p>14 Q. No. I'm sorry. Who are they? As in what</p> <p>15 are their names?</p> <p>16 A. I guess the number one would be Michael</p> <p>17 Lara.</p> <p>18 Q. Could you spell that last name for me?</p> <p>19 A. L-A-R-A.</p> <p>20 Q. Okay. And who was number 2?</p> <p>21 A. Not really like a number two but I think he</p> <p>22 was probably the other one, I think -- oh, the --</p> <p>23 Detective Sanchez.</p> <p>24 Q. And what is Detective Sanchez's first name?</p> <p>25 A. Ray. Raymundo. I think it's Raymundo. We</p>	<p style="text-align: right;">Page 21</p> <p>1 later they brought me back in and I had discussed the</p> <p>2 case with Detective Lara about my -- about his</p> <p>3 testimony, what he was going to say, what he was going</p> <p>4 to do, and we weren't allowed because we had, I guess,</p> <p>5 the Rule, the Rule had already been set and I testified</p> <p>6 that yeah, I had asked him, hey, I already testified</p> <p>7 I'm going back and I'm gonna say, I have -- they want</p> <p>8 me back on the stand and I wasn't supposed to talk to</p> <p>9 him during the --</p> <p>10 Q. Okay. So in between the first and the</p> <p>11 second time you testified, what all did you discuss</p> <p>12 with Michael Lara?</p> <p>13 A. Just why he -- what they -- what they had</p> <p>14 asked him, what they were going to -- what they were</p> <p>15 going to -- what kind of questions they were asking him</p> <p>16 and that I was going to go back, I wasn't -- they were</p> <p>17 going to ask -- I was going to -- it was about the</p> <p>18 round count, how many rounds and this and that.</p> <p>19 Q. And why -- why did you have that</p> <p>20 conversation with him?</p> <p>21 A. Just by the printer because I know he had</p> <p>22 testified the week before and I kind of just mentioned</p> <p>23 it to him, hey, guess what, they want me back on. The</p> <p>24 DA -- the ADA called me over the weekend. She wants me</p> <p>25 to go back and clarify the rounds.</p>

<p style="text-align: right;">Page 22</p> <p>1 THE REPORTER: Was that clear for you all?</p> <p>2 It didn't come clear on my end. I'm sorry.</p> <p>3 MR. HILKE: That's okay. It was clear for</p> <p>4 me but it sounds like i should ask the question again.</p> <p>5 Is that right?</p> <p>6 THE REPORTER: I'd need to get the answer,</p> <p>7 just -- "and why did you have that conversation with</p> <p>8 him? Answer: Because i know he had testified the week</p> <p>9 before and I kind of just wanted."</p> <p>10 BY MR. HILKE:</p> <p>11 Q. So, Detective Loya, could you for the</p> <p>12 record, could you answer that again? Why did you have</p> <p>13 that conversation with Michael Lara?</p> <p>14 A. Just to tell him that I had been called</p> <p>15 over the weekend and they wanted me to go back in there</p> <p>16 and clarify the rounds. It was just small talk, just</p> <p>17 talking to him and I'm not supposed to discuss anything</p> <p>18 outside of the court after I've been given the Rule,</p> <p>19 after I had already been sworn in.</p> <p>20 Q. And did I -- did I, is this correct, did</p> <p>21 you ask him what questions he had been asked?</p> <p>22 A. Not really. Just telling him what I was --</p> <p>23 that I had already -- that I was going back and that I</p> <p>24 had to clarify the rounds. It was just small talk.</p> <p>25 Q. And did he -- did he share any information</p>	<p style="text-align: right;">Page 24</p> <p>1 my ass chewed by the judge that I wasn't supposed to be</p> <p>2 talking about it and Michael was upset, Detective Lara</p> <p>3 was upset because I dragged him into this.</p> <p>4 Q. And what did he -- how did you know that he</p> <p>5 was upset?</p> <p>6 A. Because he told me he was upset. I</p> <p>7 apologized. I told him, I didn't mean to drag you into</p> <p>8 this, I screwed up. I should have known that I wasn't</p> <p>9 supposed to discuss this outside of the courtroom and</p> <p>10 I'm sorry I dragged you into this.</p> <p>11 Q. And what did the -- did Michael Lara say</p> <p>12 anything to you in that conversation?</p> <p>13 A. After I apologized? Yeah, he was just</p> <p>14 upset. He didn't want anything to do with me.</p> <p>15 Q. And did he -- so do you remember</p> <p>16 specifically what he said?</p> <p>17 A. No. Just probably some words and he was</p> <p>18 upset and yeah, because I dragged him into this.</p> <p>19 Q. Do you remember what words he called you?</p> <p>20 MR. DARNELL: Object to form.</p> <p>21 A. No, not specifically but yeah, he was upset</p> <p>22 that I dragged him into this.</p> <p>23 BY MR. HILKE:</p> <p>24 Q. Did you have any subsequent conflicts with</p> <p>25 Michael Lara?</p>
<p style="text-align: right;">Page 23</p> <p>1 with you?</p> <p>2 A. No, sir.</p> <p>3 Q. Okay. So did anyone else other than you</p> <p>4 and Michael find out about this conversation?</p> <p>5 A. Did anybody else find out about the</p> <p>6 conversation? During the court hearing, I told him I</p> <p>7 guess everybody that was in the courtroom heard that.</p> <p>8 Q. So how did Michael react to you sharing</p> <p>9 that in your testimony at court?</p> <p>10 A. Just okay, all right. Be careful. Good</p> <p>11 luck.</p> <p>12 Q. So did you -- did -- was there a conflict</p> <p>13 between you and Michael?</p> <p>14 A. Not right then. At that time, no, there</p> <p>15 wasn't.</p> <p>16 Q. Okay. Did the conflict later arise?</p> <p>17 A. Yes.</p> <p>18 Q. Tell me about that, please.</p> <p>19 A. During the -- my testimony on that</p> <p>20 particular course after I had said that I had spoken to</p> <p>21 Michael Lara that morning before I came into court,</p> <p>22 they stopped everything, they -- the jury left. The</p> <p>23 attorneys were there. They told him I wasn't allowed</p> <p>24 to talk. The next day, they called the supervisors.</p> <p>25 Michael Lara had to go to court the next day and I got</p>	<p style="text-align: right;">Page 25</p> <p>1 A. I'm sorry, I didn't understand the</p> <p>2 question.</p> <p>3 Q. Oh yes. Did you have any other conflicts</p> <p>4 with Michael Lara?</p> <p>5 A. No, sir.</p> <p>6 Q. Did you ever work with him again after</p> <p>7 that?</p> <p>8 A. No, sir.</p> <p>9 Q. How long was it between this incident and</p> <p>10 when you got the transfer to White Collar Crimes?</p> <p>11 A. Approximately, maybe about three weeks.</p> <p>12 Q. So you mentioned that you had also had a</p> <p>13 conflict -- you had had -- I don't want to put words in</p> <p>14 your mouth. You mentioned Detective Ray Sanchez. Can</p> <p>15 you tell me a little bit about what you were referring</p> <p>16 to with to Detective Sanchez?</p> <p>17 A. Same incident, he was -- he had already</p> <p>18 been there for a while. He just thought it wasn't good</p> <p>19 for me to work there anymore. They were afraid I might</p> <p>20 say something like that again down the road.</p> <p>21 Q. So was Sanchez working on the case that you</p> <p>22 testified at that you were just talking about?</p> <p>23 A. I don't believe he did, no.</p> <p>24 Q. Okay. And had you -- had you worked on</p> <p>25 cases with Sanchez before?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Yes, sir, I have.</p> <p>2 Q. How many cases would you say?</p> <p>3 A. If I had to guess, maybe more than 10.</p> <p>4 Q. And in Crimes Against Persons, what is your</p> <p>5 caseload like? How many cases do you work on in a</p> <p>6 year?</p> <p>7 A. If I had to guess, maybe anywhere from 30</p> <p>8 to 50 cases.</p> <p>9 Q. So you worked with all the detectives or</p> <p>10 did you have sort of a main partner who you tended to</p> <p>11 get assigned with?</p> <p>12 A. All the detectives.</p> <p>13 Q. Okay. So what did Detective Sanchez tell</p> <p>14 you that he was concerned about based on this testimony</p> <p>15 incident?</p> <p>16 A. I -- he didn't tell me specifically. I was</p> <p>17 just hearing rumors around the office that he was one</p> <p>18 of the guys that didn't want me to work there anymore.</p> <p>19 Q. Do you remember who you heard the rumors</p> <p>20 from?</p> <p>21 A. Not specifically, just various detectives</p> <p>22 in the office.</p> <p>23 Q. Do you remember anyone specific who you</p> <p>24 discussed the rumors with?</p> <p>25 A. Everybody I guess, everybody that was</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. So you had never broken that rule -- I --</p> <p>2 scratch -- strike that.</p> <p>3 Do you know whether other detectives in the</p> <p>4 department, in the Crimes Against Persons also followed</p> <p>5 that rule?</p> <p>6 MR. DARNELL: Object to form.</p> <p>7 BY MR. HILKE:</p> <p>8 Q. I'm sorry. Could you repeat that?</p> <p>9 A. They followed the rule, yes.</p> <p>10 Q. Are you aware of any similar incident where</p> <p>11 a detectives discussed their testimony while still</p> <p>12 under oath?</p> <p>13 A. No, sir.</p> <p>14 Q. And had you ever been asked by another</p> <p>15 detective to discuss your testimony under oath while</p> <p>16 the trial was underway?</p> <p>17 A. No, sir.</p> <p>18 Q. So why do you think if everyone always</p> <p>19 followed the rule they were worried about you getting</p> <p>20 in -- getting them in trouble?</p> <p>21 A. I guess you'd have to ask them.</p> <p>22 Q. So you don't have any idea why they were</p> <p>23 worried you would get them in trouble?</p> <p>24 A. No, sir, I don't.</p> <p>25 Q. And have you ever heard of anyone else</p>
<p style="text-align: right;">Page 27</p> <p>1 there, they would tell me. Supervisors would tell me</p> <p>2 that, too, and I just didn't want to create a conflict.</p> <p>3 So.</p> <p>4 Q. And so, I guess, I'm a little confused.</p> <p>5 What was -- what was everybody worried about?</p> <p>6 A. That if I ever go back to court I'd drag</p> <p>7 them back into court like I did Detective Lara and have</p> <p>8 the judge get mad at us, well, pretty much at me for</p> <p>9 discussing the case outside of the courtroom.</p> <p>10 Q. The incident -- so with Michael Lara, was</p> <p>11 that the only time you discussed a case that was --</p> <p>12 that was at trial -- strike that.</p> <p>13 At the time of the incident with Michael</p> <p>14 Lara that you were just talking about, did you know</p> <p>15 that once you are under oath you can't talk about your</p> <p>16 testimony until the trial is done?</p> <p>17 A. I do, I knew that.</p> <p>18 Q. You knew that at the time.</p> <p>19 A. Mm-hmm.</p> <p>20 Q. But you didn't follow that rule with</p> <p>21 Michael Lara?</p> <p>22 A. No, sir.</p> <p>23 Q. Was that the only time you failed to follow</p> <p>24 that rule?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 29</p> <p>1 getting encouraged out of Crimes Against Persons</p> <p>2 before?</p> <p>3 A. Not that I know of.</p> <p>4 Q. So as far as you know, this is -- you're</p> <p>5 the only person that's ever happened to?</p> <p>6 A. That I know of, yes.</p> <p>7 Q. Understood. Okay. And you mentioned Ray</p> <p>8 Sanchez as a person who, you know, asked -- so do you</p> <p>9 remember anything else about why Ray Sanchez was</p> <p>10 worried about working with you in the future?</p> <p>11 A. He didn't tell me personally, but he was</p> <p>12 one of the most senior guys there, vocal guys that, you</p> <p>13 know, that he just didn't want me working there</p> <p>14 anymore. That's what I had heard. I never discussed</p> <p>15 it with him or anything like that personally.</p> <p>16 Q. I'm sorry. Did you say, "Senior guys,</p> <p>17 vocal guys"?</p> <p>18 A. Yeah. One of the senior detectives there,</p> <p>19 he had been there for a while.</p> <p>20 Q. What do you mean that he was a vocal guy?</p> <p>21 A. Well, he kind of spoke for everybody, I</p> <p>22 guess, the leader of the unit.</p> <p>23 Q. What did -- what did you observe about him</p> <p>24 to say that he is a leader of the unit?</p> <p>25 A. Just observations, I mean, the way he</p>

<p style="text-align: right;">Page 30</p> <p>1 addressed the unit during meetings. I mean,</p> <p>2 experience, he had been there for a while. That's why</p> <p>3 I believe he was one of the leaders.</p> <p>4 Q. Did other detectives respect his opinion?</p> <p>5 A. Yes.</p> <p>6 Q. Did they listen to what he had to say?</p> <p>7 A. Yes.</p> <p>8 Q. And if he had gone the other way, if he had</p> <p>9 said, you know, Detective Loya just made a mistake,</p> <p>10 he's a good officer, let's keep him here, do you</p> <p>11 believe that that would have carried influence with the</p> <p>12 other detectives?</p> <p>13 A. I don't know. I believe that -- yeah.</p> <p>14 Q. Fair enough. Okay. And so -- so then you</p> <p>15 transferred to financial to White Collar Crimes and</p> <p>16 that's where you are still assigned today; is that</p> <p>17 right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Is there anyone else that you remember</p> <p>20 having a con -- did you have any other issues in Crimes</p> <p>21 Against Persons that made you want to transfer out?</p> <p>22 A. No, sir.</p> <p>23 Q. Were you enjoying your work there at the</p> <p>24 time?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember how many partners you had</p> <p>3 as a patrol officer?</p> <p>4 A. A few.</p> <p>5 Q. Who was your first one?</p> <p>6 A. Oh, gosh. I'm first assigned to -- my</p> <p>7 first year in FTO, so every three months I would rotate</p> <p>8 with a field training officer.</p> <p>9 Q. Okay. And what about after the FTO period?</p> <p>10 A. Various different officers but the real one</p> <p>11 that I stayed working with for a long, long time was</p> <p>12 Officer Eric Castaneda. We worked together for about</p> <p>13 two, three years.</p> <p>14 Q. Okay. Do you work with anyone else for</p> <p>15 such a long period of time?</p> <p>16 A. That would be the longest partner that I</p> <p>17 had.</p> <p>18 Q. Okay. And did -- are you assigned a</p> <p>19 partner in any way as a detective?</p> <p>20 A. Not assigned. No, sir.</p> <p>21 Q. What about, I guess, unofficially or do you</p> <p>22 have detectives you tend to work with more than others?</p> <p>23 A. Not really. We -- kind of worked with a</p> <p>24 little bit of everybody. Anybody need help, if I</p> <p>25 needed help, the first one I'd see, hey, are you going</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. And before the -- before the testimony</p> <p>2 incident, did you have any plan to transfer to White</p> <p>3 Collar Crimes?</p> <p>4 A. No, sir.</p> <p>5 Q. You've done some off-duty work while</p> <p>6 employed as a police officer; is that right?</p> <p>7 A. Yes, sir.</p> <p>8 Q. What kinds of off-duty work have you done?</p> <p>9 A. Security, most part.</p> <p>10 Q. What kinds of places do you work security</p> <p>11 at?</p> <p>12 A. Gosh. Convention center, retail stores,</p> <p>13 stuff like that.</p> <p>14 Q. And is this a -- is this a -- is this</p> <p>15 something you are consistently doing as, you know, like</p> <p>16 a, what's my question, strike that.</p> <p>17 How many hours a month do you do security</p> <p>18 work?</p> <p>19 A. Gosh, sir, it depends. Right before maybe</p> <p>20 during the holidays I work a little more, right before</p> <p>21 a vacation. This year not that many to be honest with</p> <p>22 you. I haven't worked a lot.</p> <p>23 Q. So I want to take you back for a second.</p> <p>24 When you were a patrol officer at the beginning of your</p> <p>25 career, were you assigned to a partner?</p>	<p style="text-align: right;">Page 33</p> <p>1 to be busy today. I need to do a -- meet with someone,</p> <p>2 can you help me out and stuff like that.</p> <p>3 Q. Okay. So without going into the -- what</p> <p>4 you said to your lawyers or what they said to you, can</p> <p>5 you tell me how you prepared for today's deposition?</p> <p>6 A. Yes, sir. I met with my attorney on</p> <p>7 Saturday, give me -- just to prepare me for today.</p> <p>8 Q. And did you look at any documents to</p> <p>9 prepare for the deposition today?</p> <p>10 A. Yes, sir, I did.</p> <p>11 Q. What did you look at?</p> <p>12 A. My investigative supplement on this case.</p> <p>13 Q. Did you look at anything else?</p> <p>14 A. No, sir.</p> <p>15 Q. Did you watch any videos?</p> <p>16 A. No, sir, I didn't.</p> <p>17 Q. Did you listen to any audio files?</p> <p>18 A. I did, sir.</p> <p>19 Q. Okay. What audio files did you listen to?</p> <p>20 A. Right before this one, my attorney gave me</p> <p>21 a little short excerpt of some type of audio.</p> <p>22 Q. And did you recognize the people on that</p> <p>23 audio?</p> <p>24 A. I did.</p> <p>25 Q. Who was on it?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. He was a police officer with us many, many</p> <p>2 years ago, Jesse Rodriguez.</p> <p>3 Q. And were you on that audio as well?</p> <p>4 A. No, sir, I wasn't, hmm-mm.</p> <p>5 Q. Okay. And did you review any notes in</p> <p>6 prep -- other than the investigative supplement you</p> <p>7 talked about in preparation for the deposition?</p> <p>8 A. You know, when I got here earlier they gave</p> <p>9 me a bunch of binders and I guess early in the case and</p> <p>10 then they told me to look over them and I told them</p> <p>11 this is way too much. I don't know any of this</p> <p>12 information and then they made a mistake. It wasn't</p> <p>13 for me it was supposed to be for another person coming</p> <p>14 in to do an interview later on.</p> <p>15 Q. That's funny.</p> <p>16 A. Yeah. They gave me big old binders and I</p> <p>17 was, like, this is a lot of information. I don't know</p> <p>18 anything about this case.</p> <p>19 Q. I'll keep that in mind for good pranks to</p> <p>20 pull on clients going forward. So. You are aware that</p> <p>21 this lawsuit is about two murders that occurred on</p> <p>22 Electric Street in 1993; is that right?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And did you prepare any documents in</p> <p>25 your -- and you were involved in investigating those</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. So you would never throw away something</p> <p>2 that you had been carrying during the investigation,</p> <p>3 you would always scan it or tag it?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Have you ever talked with Alfonso Marquez?</p> <p>6 A. Alfonso Marquez? I was introduced to him</p> <p>7 once.</p> <p>8 Q. And when was that?</p> <p>9 A. I'm not sure. That was early when I first</p> <p>10 started in Crimes Against Persons, I guess, 2013.</p> <p>11 Q. And do you remember what was your</p> <p>12 interaction with him?</p> <p>13 A. We -- I was working with another senior</p> <p>14 detective. I can't recall who it was but we were at</p> <p>15 the County Courthouse on something and then we -- there</p> <p>16 was another big homicide case that was finishing up, I</p> <p>17 guess, they were going to give out the results and the</p> <p>18 detective I was with, hey, let's go sit in so you can</p> <p>19 kind of watch what they're doing, the closing argument,</p> <p>20 I think it was the closing arguments. And we went in</p> <p>21 there, it was full, a lot of people, anyways long story</p> <p>22 short, Al Marquez was the bailiff there and when</p> <p>23 everybody was done, they were talking and they</p> <p>24 introduced me to him, hey, this is Al Marquez. Hey,</p> <p>25 this is our new detective there with Crimes Against</p>
<p style="text-align: right;">Page 35</p> <p>1 murders in 2014; is that right?</p> <p>2 A. Yes, sir.</p> <p>3 Q. The one document reviewed, you reviewed, is</p> <p>4 that the only document you prepared as you worked on</p> <p>5 these investigations?</p> <p>6 A. Yes, sir.</p> <p>7 Q. As a detective, do you keep a personal file</p> <p>8 about any of the cases you are working on?</p> <p>9 A. No, sir.</p> <p>10 Q. And do you personally keep copies of any of</p> <p>11 your reports?</p> <p>12 A. No, sir.</p> <p>13 Q. Where are those kept?</p> <p>14 A. Where are those copies at? I guess,</p> <p>15 computer database with the police department.</p> <p>16 Q. Is there also a physical copy?</p> <p>17 A. During an investigation, I carry physical</p> <p>18 notes, stuff that I need to keep and when I'm done with</p> <p>19 the case, either I scan it into the case, turn it into</p> <p>20 ID and R or if it's evidence, obviously, I tag it and</p> <p>21 turn it in to evidence but nothing that I personally</p> <p>22 keep any files.</p> <p>23 Q. So then every document that you carry</p> <p>24 during an investigation gets either scanned or tagged?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 37</p> <p>1 Persons. That was my interaction with him.</p> <p>2 Q. Have you interacted with him since?</p> <p>3 A. No, sir.</p> <p>4 Q. Have you ever interacted with Carlos</p> <p>5 Ortega?</p> <p>6 A. Carlos Ortega. I don't remember. I don't</p> <p>7 know who that is.</p> <p>8 Q. Have you ever -- have you looked at the</p> <p>9 complaint in this case sort of the --</p> <p>10 A. Yeah.</p> <p>11 Q. Have you looked at the complaint in this</p> <p>12 case?</p> <p>13 A. Have I looked at it? No, sir.</p> <p>14 Q. Do you know who Scott Graves is?</p> <p>15 A. I do, sir.</p> <p>16 Q. And have you interacted with him before?</p> <p>17 A. I have. Yes, sir.</p> <p>18 Q. When was the last time you interacted with</p> <p>19 him?</p> <p>20 A. We, as a matter of fact, his son works on</p> <p>21 the police department and my brother worked on the</p> <p>22 police department and they are classmates. They</p> <p>23 graduated out of the same academy and family</p> <p>24 gatherings, I met Scott Graves, and now I even know he</p> <p>25 was I think a commander of the department or a</p>

<p style="text-align: right;">Page 38</p> <p>1 lieutenant. That was before my time and that's well,</p> <p>2 my dad used to be on the department and that was the</p> <p>3 only time I ever interacted with him.</p> <p>4 Q. And how about Kenneth Bellows have you</p> <p>5 interacted with a Kenneth Bellows?</p> <p>6 A. No, sir. Sounds familiar but I don't think</p> <p>7 I have.</p> <p>8 Q. Okay. What about an Earl Arbogast?</p> <p>9 A. I just met him outside for the first time,</p> <p>10 yeah.</p> <p>11 Q. Did -- and so that was the first time you</p> <p>12 met Mr. Arbogast?</p> <p>13 A. Yes, sir, I did. Just briefly, he asked me</p> <p>14 what I was doing here and I said oh, and that was it.</p> <p>15 Q. You discovered you were both -- did you</p> <p>16 discover that you were both defendants in the same</p> <p>17 lawsuit?</p> <p>18 A. He -- he -- yeah. He asked me, what are</p> <p>19 you here for and I'm like, I don't know who are you,</p> <p>20 and he gave out the wrong name and I said, Viegas? And</p> <p>21 he said, oh, yeah. I'm here, too, and that was right</p> <p>22 in front of the young lady in the front and that was</p> <p>23 it.</p> <p>24 MR. HILKE: I'm sorry it looks like someone</p> <p>25 just joined who I don't recognize. I'm sorry. Can we</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes, sir.</p> <p>2 Q. And who is in the room with you?</p> <p>3 A. Mr. Darnell.</p> <p>4 Q. Anyone else?</p> <p>5 A. No, sir, that's it.</p> <p>6 Q. Thank you. Detective Loya, you received</p> <p>7 training on -- you, as a detective, you have received</p> <p>8 training on investigations; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. I noticed you hesitated a little. Is there</p> <p>11 something you want to clarify?</p> <p>12 A. Yes, sir, I do. I guess, what type of</p> <p>13 training are you asking? Is it like on-hands training</p> <p>14 or some type of a course that I take, a class, or --</p> <p>15 Q. Well, let's -- let's start with that. Did</p> <p>16 you take courses or classes on conducting</p> <p>17 investigations?</p> <p>18 A. Yeah. Now, I do recall going -- I know the</p> <p>19 department put out I think like a one-week course on</p> <p>20 investigations and I've gone to homicide school. They</p> <p>21 sent me out of town for about a week.</p> <p>22 Q. And do you remember when you went to</p> <p>23 homicide school?</p> <p>24 A. Gosh, maybe 2013.</p> <p>25 Q. And then, of course, you also are -- well,</p>
<p style="text-align: right;">Page 39</p> <p>1 go off the record for a second?</p> <p>2 ONLINE VIDEO TECH: Yes, of course. We are</p> <p>3 off the record the time is 10:05.</p> <p>4 (Break from 10:06 a.m. to 10:29 a.m.)</p> <p>5 ONLINE VIDEO TECH: We are back on the</p> <p>6 record for the deposition of Detective Hector Loya</p> <p>7 being conducted by video conference. My name is Sydney</p> <p>8 Little. Today is May 9, 2022, and the time is</p> <p>9 10:30 a.m.</p> <p>10 BY MR. HILKE:</p> <p>11 Q. Detective, what was the last time you</p> <p>12 talked to Ray Sanchez?</p> <p>13 A. Gosh. Years ago.</p> <p>14 Q. Have you talked to him since you left CAP?</p> <p>15 A. No, sir.</p> <p>16 Q. And so you haven't had an opportunity to</p> <p>17 talk to him about this lawsuit?</p> <p>18 A. Oh, no, sir.</p> <p>19 Q. And have you -- since you left CAP, have</p> <p>20 you talked with anyone about the Electric Street</p> <p>21 murders?</p> <p>22 A. No, sir.</p> <p>23 Q. One thing I -- one thing I forgot to ask</p> <p>24 earlier, is there anyone in the room with you right</p> <p>25 now?</p>	<p style="text-align: right;">Page 41</p> <p>1 strike that.</p> <p>2 Do you also receive field training as a</p> <p>3 detective?</p> <p>4 A. Yes, sir, on-hands.</p> <p>5 Q. So do you believe that the key to an</p> <p>6 investigation is to keep an open mind?</p> <p>7 MR. DARNELL: Objection to form.</p> <p>8 A. Yes.</p> <p>9 BY MR. HILKE:</p> <p>10 Q. And do you always follow the evidence</p> <p>11 objectively in that investigation?</p> <p>12 A. Yes.</p> <p>13 Q. Are you always open that your ideas may yet</p> <p>14 turn out to be wrong in an investigation?</p> <p>15 A. Yes.</p> <p>16 Q. Are you trained to never engage in tunnel</p> <p>17 vision?</p> <p>18 A. As far as any type of formal training in</p> <p>19 that, no, but yes, I -- yeah, you don't -- don't do the</p> <p>20 tunnel vision thing.</p> <p>21 Q. Okay. Is the most important thing in an</p> <p>22 investigation to ensure to the extent possible that you</p> <p>23 do not arrest the wrong person?</p> <p>24 A. Yes.</p> <p>25 Q. Is that more important than getting the</p>

<p style="text-align: right;">Page 42</p> <p>1 right person?</p> <p>2 A. Can you repeat the question? I didn't</p> <p>3 understand.</p> <p>4 Q. Sure. Is it more important to not arrest</p> <p>5 the wrong person than it is to arrest the right person?</p> <p>6 MR. DARNELL: I am going to object to the</p> <p>7 question. Is there any way you can make that a little</p> <p>8 bit clearer?</p> <p>9 THE REPORTER: You need to speak up on the</p> <p>10 objection, please. A little closer to the mic.</p> <p>11 MR. DARNELL: My apologies. I dont know</p> <p>12 why I'm having trouble with my microphone right now.</p> <p>13 But is that any better?</p> <p>14 THE REPORTER: Let me try to turn this up.</p> <p>15 Go ahead.</p> <p>16 MR. DARNELL: Wally, I know what you are</p> <p>17 trying to say but the question is confusing. Is there</p> <p>18 any way you can clarify that question a little bit?</p> <p>19 MR. HILKE: I can try.</p> <p>20 MR. MARTINEZ: Jeep, your audio is pretty</p> <p>21 bad. I don't know if there is anything you can do to</p> <p>22 try to improve it.</p> <p>23 MR. DARNELL: Is that any better? I've</p> <p>24 never had problems with audio until today.</p> <p>25 THE REPORTER: It sounds about the same. I</p>	<p style="text-align: right;">Page 44</p> <p>1 some feedback. Are you still getting audio from your</p> <p>2 phone? And if so, if you would try getting the audio</p> <p>3 from Detective Loya's computer that may -- I'm not</p> <p>4 getting it now. Maybe we're all right.</p> <p>5 BY MR. HILKE:</p> <p>6 Q. Detective, so you would say -- so,</p> <p>7 Detective, avoiding getting, avoiding arresting the</p> <p>8 wrong person, avoiding picking a false suspect is just</p> <p>9 as important as finding the guilty suspect?</p> <p>10 A. Yes.</p> <p>11 Q. Do you approach all your interviews with</p> <p>12 that in mind?</p> <p>13 A. Yes.</p> <p>14 Q. And you stay objective to evaluate all the</p> <p>15 evidence to make sure you don't miss something?</p> <p>16 A. Yes.</p> <p>17 Q. And would you describe yourself as a</p> <p>18 thorough detective?</p> <p>19 A. Yes.</p> <p>20 Q. You dot all your I's, cross all your T's?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you understand it's important to be</p> <p>23 thorough and unbiased to protect the innocent?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And also to convict the guilty?</p>
<p style="text-align: right;">Page 43</p> <p>1 think if you can get that closer to your mouth, it'll</p> <p>2 help. I dont know.</p> <p>3 MR. HILKE: Jeep, do you want to try one</p> <p>4 more time with it closer to your mouth?</p> <p>5 MR. DARNELL: I'm as close as i can get. I</p> <p>6 dont know what the -- is.</p> <p>7 MR. HILKE: Let's -- can we go off the</p> <p>8 record for a second, please?</p> <p>9 ONLINE VIDEO TECH: We are off the record.</p> <p>10 The time is 10:36.</p> <p>11 (Pause until 10:39 a.m.)</p> <p>12 ONLINE VIDEO TECH: Back on the record for</p> <p>13 the deposition of Detective Hector Loya being conducted</p> <p>14 by videoconference. My name is Sydney Little. Today</p> <p>15 is May 9, 2022, and the time is 10:40.</p> <p>16 MR. DENTON: Counsel, can we capture our</p> <p>17 agreement that an objection by one, any one of the</p> <p>18 defense lawyers will preserve that same objection?</p> <p>19 MR. HILKE: Yes, so stipulated.</p> <p>20 BY MR. HILKE:</p> <p>21 Q. Detective Loya, what is more important in</p> <p>22 an investigation, avoiding arresting the wrong person,</p> <p>23 or getting the right person?</p> <p>24 A. It's both.</p> <p>25 MR. HILKE: Jeep, are you -- I'm getting</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes.</p> <p>2 Q. Detective, did you receive training on how</p> <p>3 to document your work, your police work?</p> <p>4 A. Can't recall if it was formal training or</p> <p>5 just on-hands learning from other people, being guided</p> <p>6 from other people this is what you do, what not to do,</p> <p>7 et cetera.</p> <p>8 Q. Are there certain standards for how your</p> <p>9 work should be recorded?</p> <p>10 A. Yeah. Dates, times are important, when you</p> <p>11 talk to somebody, you interview somebody, you meet with</p> <p>12 people, yeah, make sure everything -- you're ready --</p> <p>13 you're taking good notes.</p> <p>14 Q. And is that something that supervisors</p> <p>15 would look at, the quality of your notes and recording?</p> <p>16 A. Not sure if they look at it. I mean,</p> <p>17 they're -- I guess, they would have to but, yeah, I</p> <p>18 never -- in my years I've never had a supervisor</p> <p>19 question my note taking or anything like that.</p> <p>20 Q. When you were in Crimes Against Persons,</p> <p>21 where did you record your notes?</p> <p>22 A. Notes, notebooks.</p> <p>23 Q. Notebooks. And did you keep a specific</p> <p>24 notebook for that purpose?</p> <p>25 A. I usually had, I had one notebook that I'd</p>

<p style="text-align: right;">Page 46</p> <p>1 keep with me and I would date it, sometimes I'd work</p> <p>2 different cases at a time and then I would just -- each</p> <p>3 page I would jot down that specific stuff that I had</p> <p>4 for that particular case and then I would jot down</p> <p>5 another -- another piece of paper for that one.</p> <p>6 Q. So with each piece of paper is a separate</p> <p>7 case?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And then would you -- would you later take</p> <p>10 those pages out of the notebook?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Where would you put them?</p> <p>13 A. I would -- I know a few years down the road</p> <p>14 they told us that we had to scan them into the reports</p> <p>15 into the case. I'm not sure, sir. I -- it wasn't --</p> <p>16 it's been a few years.</p> <p>17 Q. Did they tell you that -- were you told</p> <p>18 that after you joined Crimes Against Persons?</p> <p>19 A. I can't recall to be honest with you, sir.</p> <p>20 I know there was some type of memo came out or some</p> <p>21 policy that we had to scan all our notes. I can't</p> <p>22 recall when that came out.</p> <p>23 Q. Okay. And what did you do with your notes</p> <p>24 before that memo or policy came out?</p> <p>25 A. That's a good question. I guess, shred</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. And what if it was not recorded?</p> <p>2 A. I would put maybe key notes, what this</p> <p>3 person said. Usually, it's a witness.</p> <p>4 Q. Did you also take, did you take additional</p> <p>5 notes after the interview?</p> <p>6 A. No, sir. Also, another example is if I am</p> <p>7 typing out a statement, obviously, I'm not writing down</p> <p>8 because I'm typing somebody's -- they're telling me</p> <p>9 what happened so that would be my notes, the actual</p> <p>10 statement.</p> <p>11 Q. Okay. So when you've taken -- when you</p> <p>12 took witness statements at CAP, were you always at a</p> <p>13 computer?</p> <p>14 A. Yes, sir.</p> <p>15 Q. So you never took a statement by hand, you</p> <p>16 always typed it?</p> <p>17 A. Correct.</p> <p>18 Q. And was your practice to write a summary of</p> <p>19 what a witness or a suspect said after the interview?</p> <p>20 A. I don't understand the question.</p> <p>21 Q. Was part of your practice after an</p> <p>22 interview to also summarize what was said after the</p> <p>23 interview was over?</p> <p>24 A. Was the interview like recorded or was it</p> <p>25 typed or --</p>
<p style="text-align: right;">Page 47</p> <p>1 them. I don't have any notes from any of my cases.</p> <p>2 Q. What do you remember about the memo or</p> <p>3 policy that was circulated?</p> <p>4 A. That -- I think it was case law where they</p> <p>5 wanted to us make sure any notes we take that we had to</p> <p>6 put them in the -- scan them into the report.</p> <p>7 Q. Who sent it?</p> <p>8 A. The department.</p> <p>9 Q. What does that mean, the department?</p> <p>10 A. Good question. I guess, it's -- once it's</p> <p>11 approved, goes through legal, the chief's office and</p> <p>12 once they approve it, they send it out to everybody.</p> <p>13 Q. Was it circulated with every sworn officer</p> <p>14 in the police department?</p> <p>15 A. Yes, sir.</p> <p>16 Q. During your investigations when you were in</p> <p>17 Crimes Against Persons, was it your practice to take</p> <p>18 contemporaneous notes?</p> <p>19 A. Can you define that word?</p> <p>20 Q. Yes, sir. Did you take notes at the same</p> <p>21 time, for example, if you were interviewing someone did</p> <p>22 you take notes while you were conducting the interview?</p> <p>23 A. It depends. If it was a recorded</p> <p>24 interview, I probably wouldn't take any notes because I</p> <p>25 could always go back and review the audio or the video.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. For -- for -- if you could help me, please,</p> <p>2 by explaining whether you would write a summary after</p> <p>3 the interviews you might take because I don't know what</p> <p>4 all the interviews are.</p> <p>5 A. It's an example of someone's giving me a</p> <p>6 statement and I'm typing it. What they're telling me,</p> <p>7 I'm just typing what they're saying to me. I don't</p> <p>8 talk to them and then I go back and type it out.</p> <p>9 They're next to me and what they're saying or if it's</p> <p>10 recorded audio, well, it's recorded. I don't go</p> <p>11 summarize something else.</p> <p>12 Q. Would you sometimes speak with witnesses</p> <p>13 when it's not recorded and it's not a statement, say,</p> <p>14 on a phone call or in the field?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. In those circumstances, did you take</p> <p>17 notes at the same time you had the conversation?</p> <p>18 A. Probably not because I would schedule them</p> <p>19 to come in whatever they told me over the phone or I</p> <p>20 was going to -- I was like okay that's good</p> <p>21 information, can you come in tomorrow and we'll finish</p> <p>22 off tomorrow.</p> <p>23 Q. Okay. So sometimes there would be a pre</p> <p>24 conversation to a statement; is that right?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. And what notes would you make of such a pre</p> <p>2 conversation?</p> <p>3 A. Either I'd write it down on a notebook or,</p> <p>4 again, I would just say, okay let's, let's not go into</p> <p>5 detail, let's continue when you're in front of me and</p> <p>6 we'll take your statement there.</p> <p>7 Q. So sometimes -- so you wouldn't if you knew</p> <p>8 you were getting a statement, you wouldn't necessarily</p> <p>9 also take notes on the pre conversation?</p> <p>10 A. Yes, sir, correct, mm-hmm.</p> <p>11 Q. So as part of your duties, would you write,</p> <p>12 for example, reports that would lay out the various</p> <p>13 developments in an investigation?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And how would you prepare such a report?</p> <p>16 A. It's an investigative supplement.</p> <p>17 Q. Yes, how would you prepare it?</p> <p>18 A. I would chronological order. I'd time</p> <p>19 stamp it what I'm doing, little brief notes what I did,</p> <p>20 who I spoke to.</p> <p>21 Q. And the timestamps, are those from the time</p> <p>22 you are typing or are you sitting down at the end and</p> <p>23 saying, you know, nine months ago I did this, six</p> <p>24 months ago I did that?</p> <p>25 A. I don't understand the question.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And what was the rule?</p> <p>2 A. Before we -- the case, before we -- what's</p> <p>3 it called -- approve the case and we turned it over to</p> <p>4 the DA's office.</p> <p>5 Q. Okay. So sometimes -- so sometimes the</p> <p>6 last thing you do in the case might be making sure all</p> <p>7 your notes are in there, checking that all your notes</p> <p>8 got the investigative supplement?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And when you wrote an investigative</p> <p>11 supplement, did you ever -- ever -- did multiple</p> <p>12 officers ever contribute to the same supplement?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And how -- was it usual that it</p> <p>15 would be one officer versus multiple officers?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So was it common that multiple</p> <p>18 officers would contribute to one investigative</p> <p>19 supplement?</p> <p>20 A. Yes.</p> <p>21 Q. And when that happened, would each officer</p> <p>22 who contributed note which officer was adding</p> <p>23 information?</p> <p>24 A. I kind of lost you there for a minute. Can</p> <p>25 you repeat the question?</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Sure. Do you write an investigative</p> <p>2 supplement all at once or over time?</p> <p>3 A. Depends. Usually, it's when I had a chance</p> <p>4 I would note stuff on my notebook. When I had some</p> <p>5 downtime I'd go back open up my supplement and type in</p> <p>6 what I wrote down.</p> <p>7 THE REPORTER: There's somebody else</p> <p>8 talking in there.</p> <p>9 MR. HILKE: You know, I think that might be</p> <p>10 Detective Marquez, if you could mute your zoom. Thank</p> <p>11 you, sir.</p> <p>12 BY MR. HILKE:</p> <p>13 Q. Okay. So sometimes you would go back after</p> <p>14 you had -- you would go back and put your handwritten</p> <p>15 notes onto an investigative supplement?</p> <p>16 A. Correct.</p> <p>17 Q. Was there any -- any standard for how much</p> <p>18 time you would let pass before transferring your notes</p> <p>19 to the investigative supplement?</p> <p>20 A. There was no rule that I -- that I</p> <p>21 remember.</p> <p>22 Q. Yeah. And was there a -- any standard for</p> <p>23 when the investigative supplement needed to be</p> <p>24 completed?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q. Yes, sir. So if, say, two different</p> <p>2 officers are contributing to the same investigative</p> <p>3 supplement, is each of those officers going to put</p> <p>4 that, you know, here's a note from Detective Loya,</p> <p>5 here's the note from Detective So-and-so?</p> <p>6 A. If I understood the question, I may put in</p> <p>7 my supplement that I worked with Detective So-and-so,</p> <p>8 we worked together, yeah, I might include them in my --</p> <p>9 in my supplement.</p> <p>10 Q. But then in your supplement is another</p> <p>11 officer actually typing into the supplement that you</p> <p>12 prepared?</p> <p>13 A. Oh, no, sir.</p> <p>14 Q. Okay. So they're always going to be</p> <p>15 separate supplements, one from each officer who is</p> <p>16 updating?</p> <p>17 A. Should be, yes, sir.</p> <p>18 Q. And have you ever had another officer type</p> <p>19 part of your supplement?</p> <p>20 A. No, sir.</p> <p>21 Q. And have you ever typed part of another</p> <p>22 officer's supplement?</p> <p>23 A. No, sir.</p> <p>24 Q. So can you tell me when you wrote a</p> <p>25 supplement, what were, you know, what were El Paso, the</p>

<p style="text-align: right;">Page 54</p> <p>1 El Paso Police Department's policies and procedures</p> <p>2 about what should be in that supplement?</p> <p>3 A. I'm not sure what the procedures manual,</p> <p>4 what the procedure says that should be in there, to be</p> <p>5 honest with you.</p> <p>6 Q. So how -- how did you know what to put in</p> <p>7 there?</p> <p>8 A. Because that's what I did. That's -- that</p> <p>9 was my involvement in the case, my investigation, who I</p> <p>10 spoke to, what I did, just somehow in my career they</p> <p>11 told me that's what I needed to do. I didn't -- I</p> <p>12 don't believe I read it anywhere. I was just told.</p> <p>13 Q. And what -- what were you told about how to</p> <p>14 do it?</p> <p>15 A. Just to keep records, make sure all your</p> <p>16 records are correct, dates, times, persons you met, you</p> <p>17 spoke to, what, I mean, just something to down the road</p> <p>18 if I ever go to court something that could kind of -- I</p> <p>19 could recall. I could remember stuff.</p> <p>20 Q. Was there anything that, you know -- strike</p> <p>21 that.</p> <p>22 Were there things you were told not to do</p> <p>23 when writing a report?</p> <p>24 A. No, sir.</p> <p>25 Q. And do you recall receiving any more</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. And is that after it's final or before it's</p> <p>2 final?</p> <p>3 A. Either/or.</p> <p>4 Q. Do you, in Crimes Against Persons, did you</p> <p>5 ask other detectives to look at your investigative</p> <p>6 supplements for accuracy?</p> <p>7 A. Yes, sir. Especially the case agent, I'd</p> <p>8 say, hey, I would -- if I'm not the case agent, I would</p> <p>9 say, hey, my investigative supplement is in there</p> <p>10 already, double-check and make sure I didn't miss</p> <p>11 anything.</p> <p>12 Q. And is that something the case agent would</p> <p>13 always do with the investigative supplements on the</p> <p>14 case?</p> <p>15 A. I'm not sure always. I know I did that and</p> <p>16 some of the detectives I worked with they would -- we</p> <p>17 would tell that to each other.</p> <p>18 Q. Was that a best practice for the case agent</p> <p>19 to look at all the supplements before they're</p> <p>20 finalized?</p> <p>21 A. Sure, yes.</p> <p>22 Q. And in your reports, was your practice to</p> <p>23 document events in the case as they happened?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And is that important to do?</p>
<p style="text-align: right;">Page 55</p> <p>1 specific guidance beyond what you've just told me about</p> <p>2 what a report should have in it?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Okay. And do you have in mind anything</p> <p>5 that would refresh your memory about the instruction</p> <p>6 you had gotten?</p> <p>7 A. No, sir.</p> <p>8 Q. So we talked a little bit about this</p> <p>9 before. Give me one moment, please.</p> <p>10 So you talked about how you would have take</p> <p>11 handwritten notes and then make sure that what was in</p> <p>12 those notes was in your reports; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. And at some point you said a memo was</p> <p>15 circulated saying we've got to scan notes now.</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you -- have you received any other</p> <p>18 guidance on retaining notes?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Have you received any other guidance on</p> <p>21 destroying notes?</p> <p>22 A. Not that I recall.</p> <p>23 Q. And after you finished an investigative</p> <p>24 supplement, do other detectives on the case look at it?</p> <p>25 A. I'm pretty sure they do. I know I have.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Yes.</p> <p>2 Q. And is it important to be thorough as well?</p> <p>3 A. Yes.</p> <p>4 Q. And anything that's relevant should be put</p> <p>5 in writing in an investigation, right?</p> <p>6 A. Yes.</p> <p>7 Q. And that includes the stuff that's good for</p> <p>8 the prosecution and good for the defense, right?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And you're also look -- checking carefully</p> <p>11 to make sure everything is accurate; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And that includes what a witness said to</p> <p>14 you in a conversation, right?</p> <p>15 A. Yes.</p> <p>16 Q. It also includes how the witness was</p> <p>17 questioned, right?</p> <p>18 A. I don't understand the question.</p> <p>19 Q. Yeah. And so there are different ways you</p> <p>20 can interview witnesses, right?</p> <p>21 A. I -- yes, sir.</p> <p>22 Q. You can interview them at the police</p> <p>23 station or at their home, right?</p> <p>24 A. Correct. Yes, sir.</p> <p>25 Q. And you can, what's a good example,</p>

<p style="text-align: right;">Page 58</p> <p>1 sometimes you might read Miranda warnings and</p> <p>2 sometimes, you know, if it's a witness who is not a</p> <p>3 suspect you might not; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. And so whatever -- whatever you are doing</p> <p>6 to prepare the witness in that way, those need to be in</p> <p>7 the report, too, right?</p> <p>8 A. I don't understand preparing the witness?</p> <p>9 You --</p> <p>10 Q. Yeah. I just mean the way you ask -- the</p> <p>11 way you are asking questions, what the sort -- what the</p> <p>12 situations are and what the witness has been told.</p> <p>13 A. My personal experience speaking to</p> <p>14 witnesses I tell them what I'm working, do you have any</p> <p>15 knowledge of this? Yes, I did, I was witnessed it. I</p> <p>16 go, okay, good. We're going to go down to</p> <p>17 headquarters. I'm going to take a written, a typed-out</p> <p>18 statement and you're going to sit next to me and you're</p> <p>19 going to tell me what happened. That's how I would</p> <p>20 prepare them.</p> <p>21 Q. So the way -- your introduction to a</p> <p>22 witness you are trying to talk to is pretty much the</p> <p>23 same every time?</p> <p>24 A. Yes, sir, mm-hmm.</p> <p>25 Q. And so you might not make a note of it</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And but specifically, the details that you</p> <p>2 shared to make sure they know what you are talking</p> <p>3 about, those wouldn't necessarily be written down by</p> <p>4 you?</p> <p>5 A. Probably not, sir, because I'm going to get</p> <p>6 a statement, yeah, later on and I just know, yeah, he</p> <p>7 did see something. He told me he -- the incident.</p> <p>8 That's usually when I write it down. I just -- I'll</p> <p>9 take the written statement.</p> <p>10 Q. And sometimes witnesses contradict</p> <p>11 themselves, right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And if a witness contradicts him or</p> <p>14 herself, is it important to write that down?</p> <p>15 A. What that witness told me a couple of hours</p> <p>16 earlier, hey, I did see it and then when I get back to</p> <p>17 the station, I'll -- they say, you know what, I didn't</p> <p>18 see that. I'll put whatever he's telling me right then</p> <p>19 and there. I don't put, yeah, well you told me that</p> <p>20 earlier. Now you're changing your mind. Yeah, it</p> <p>21 depends.</p> <p>22 Q. What does it depend on?</p> <p>23 A. Well, earlier he told me, yeah, I did</p> <p>24 witness it but then when he gets to the station, I'll</p> <p>25 put there, like, okay, what did you see? Well, you</p>
<p style="text-align: right;">Page 59</p> <p>1 because you know how you -- what you said to them</p> <p>2 before they came in for a statement?</p> <p>3 A. Yes, sir, mm-hmm.</p> <p>4 Q. Okay. And you said, you know, tell -- when</p> <p>5 you say tell the witness what I'm working, what does</p> <p>6 that mean?</p> <p>7 A. I'm investigating a homicide. Did you see</p> <p>8 it, did you witness it? No, I didn't, whatever the</p> <p>9 witness was saying. I said, okay, I was here, I was</p> <p>10 standing. I'm okay, good, you know what, we're going</p> <p>11 to go back to the office and I'm going to take a</p> <p>12 statement or I'll schedule you can you come in tomorrow</p> <p>13 because I don't have a chance to meet with you today.</p> <p>14 Okay, good, and we schedule that.</p> <p>15 Q. Is that because you need to share some</p> <p>16 details about the case to make sure they know what</p> <p>17 you're talking about?</p> <p>18 A. Yes, sir. Absolutely.</p> <p>19 Q. 'Cause it would be a waste of time for</p> <p>20 someone to come in and not know and they thought you</p> <p>21 were talking about something else?</p> <p>22 A. It works either way or not because</p> <p>23 sometimes I -- we need to get with those witnesses as</p> <p>24 soon as possible before they forget stuff or they hear</p> <p>25 other stuff, yeah.</p>	<p style="text-align: right;">Page 61</p> <p>1 told me you did see it and well, I didn't, and I'm</p> <p>2 like, okay. I'm going to put here you didn't see it.</p> <p>3 Okay. That's it. There may be times I might have put,</p> <p>4 well, earlier you did tell me that, but now you're</p> <p>5 telling me something else. Yeah, I might have put that</p> <p>6 in there also.</p> <p>7 Q. But you wouldn't necessarily put that in</p> <p>8 the example you were just giving that a witness told</p> <p>9 you he saw something but then when they come to give</p> <p>10 the statement they deny it. You wouldn't necessarily</p> <p>11 include the earlier statement there?</p> <p>12 A. Probably not, sir. Yeah, I can't recall</p> <p>13 any time maybe -- maybe I did, I don't -- I don't</p> <p>14 recall any specific statement I took like that.</p> <p>15 Q. And you say probably not. Why wouldn't you</p> <p>16 mention the contradiction?</p> <p>17 A. Because that's not his statement. Maybe he</p> <p>18 thought he saw something or he didn't understand the</p> <p>19 question I was giving him but then when he got here,</p> <p>20 again, I'll say, hey, well you told me yesterday that</p> <p>21 you did. You were there. No, sir, I wasn't there.</p> <p>22 Hey, are you lying to me, you know, being truthful?</p> <p>23 Why aren't you being truthful? If you did see it, if</p> <p>24 you did see it then you need to be honest with me tell</p> <p>25 me. You know, I'm working this case, this and that.</p>

<p style="text-align: right;">Page 62</p> <p>1 Okay. No, I really didn't see it. I don't know why I</p> <p>2 told you that. Okay. Well, I'm just going to write</p> <p>3 down what you're telling me right now.</p> <p>4 Q. Okay. Is it important to document the</p> <p>5 start and stop time of an interview with a witness?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And if you talk to a witness more than</p> <p>8 once, is it important to document each time you talk to</p> <p>9 them?</p> <p>10 A. You mean document, like, on my</p> <p>11 investigative supplement or -- because when I take a</p> <p>12 witness statement, I put the date and the time I start</p> <p>13 it and then on my notes I might put, yeah, he came in</p> <p>14 at this time but I may not put end time that I.</p> <p>15 Q. Yeah. And I don't mean in the</p> <p>16 investigative supplement versus your notebook or</p> <p>17 anywhere else. I just mean, is it important to record</p> <p>18 each time you talk to a witness?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. But it might be in different places?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And is the same true for an</p> <p>23 investigation that if you arrive to a location, arrive</p> <p>24 to a scene, it's important to note the time of the</p> <p>25 occurrence?</p>	<p style="text-align: right;">Page 64</p> <p>1 with where you wonder, you know, are they really doing</p> <p>2 100 percent in scanning every last note they take?</p> <p>3 A. No, sir. Yeah, no. I don't know.</p> <p>4 Q. So after the notes are scanned, where are</p> <p>5 they kept?</p> <p>6 A. After they're scanned, I will shred my</p> <p>7 notes. I don't know about everybody else's and I think</p> <p>8 in my supplements I will put there notes were scanned</p> <p>9 and then I shredded them after that. I put that in my</p> <p>10 supplement.</p> <p>11 Q. Okay. Do you know where the electronic</p> <p>12 scanned file is kept?</p> <p>13 A. I don't understand the question.</p> <p>14 Q. Yeah. So after the notes are scanned,</p> <p>15 those scans are saved electronically; is that right?</p> <p>16 A. Oh, back in the old days, we used to have</p> <p>17 those old scanners and you'd put, like, you would</p> <p>18 download it like a USB and then you'd have to take that</p> <p>19 USB over to your computer and download it but now the</p> <p>20 newer printers, we're able to scan on the printer and</p> <p>21 it sends it by email and then we attach it to the case.</p> <p>22 Q. Got it. And so if you want to go to the</p> <p>23 case and look at those scanned notes, how do you do</p> <p>24 that?</p> <p>25 A. You -- when we would scan the notes, we</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes, sir.</p> <p>2 Q. And would you -- would you rely on that</p> <p>3 information later?</p> <p>4 A. Yes.</p> <p>5 Q. And it might be needed at trial; is that</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And the DA might need it when they review</p> <p>9 the case; is that right?</p> <p>10 A. Yes.</p> <p>11 Q. We talked about this a little before but I</p> <p>12 want to ask about how notes are kept and at Crimes</p> <p>13 Against Persons specifically. You said that after the</p> <p>14 memo about notes went out, all notes, all detective</p> <p>15 notes were scanned at the end of an investigation; is</p> <p>16 that right?</p> <p>17 A. I don't know if they were all scanned but</p> <p>18 yeah, after the memo they should have been scanned.</p> <p>19 Yes, sir.</p> <p>20 Q. Okay. Do you do you have reason to believe</p> <p>21 that some notes were not scanned after the memo?</p> <p>22 A. Gosh. I'm not sure if that happened or not</p> <p>23 but yeah, I don't recall any particular situation where</p> <p>24 they weren't.</p> <p>25 Q. Are there some detectives you have worked</p>	<p style="text-align: right;">Page 65</p> <p>1 would open up a supplement and then in that supplement</p> <p>2 the narrative part I would put there supplemented</p> <p>3 generated to scan the following documents or</p> <p>4 handwritten notes.</p> <p>5 Q. And is that, like, to have case management</p> <p>6 software that that's getting entered into?</p> <p>7 A. It's the -- the system, I guess, the</p> <p>8 software, yeah. It's -- I guess, we would just hit</p> <p>9 attach, open it up, and then we would attach the file.</p> <p>10 Q. And does this software you use have a name?</p> <p>11 A. Well, the -- for the cases it -- back then</p> <p>12 we just changed last year to WebRMS. It's our -- back</p> <p>13 then it was called iLeads.</p> <p>14 Q. iLeads. Okay. Was there a policy about</p> <p>15 whether the physical notes should be shredded or could</p> <p>16 be kept?</p> <p>17 A. Not that I recall.</p> <p>18 Q. As -- do you know that -- do you know of</p> <p>19 some other detectives also shredding those notes?</p> <p>20 A. I don't know of any, sir, to be honest with</p> <p>21 you.</p> <p>22 Q. And do you know of other detectives keeping</p> <p>23 their handwritten notes after scanning them?</p> <p>24 A. I don't know.</p> <p>25 Q. In an interview, if you show a document to</p>

<p style="text-align: right;">Page 66</p> <p>1 a witness, is that something you're going to record in</p> <p>2 your notes?</p> <p>3 A. Yes.</p> <p>4 Q. And -- okay. So I asked you a little bit</p> <p>5 about training before. Do you recall any training you</p> <p>6 received on investigations when you first became a</p> <p>7 patrol officer?</p> <p>8 A. No, sir. I don't recall.</p> <p>9 Q. What about specific training when you</p> <p>10 became a detective?</p> <p>11 A. I do recall, again, I think the department</p> <p>12 put out a detective course maybe one week where they</p> <p>13 taught us, like, search warrants. They kind of most</p> <p>14 focused on search warrants how to prepare search</p> <p>15 warrants and again, I went to a homicide school. I</p> <p>16 went out of town for about a week.</p> <p>17 Q. Okay. In homicide school, was that</p> <p>18 something that everyone got or was that more of a</p> <p>19 one-time thing?</p> <p>20 A. I think everybody that was there before me</p> <p>21 had gone to some sort of homicide school. I remember I</p> <p>22 found it on the Internet. It was some really -- guy</p> <p>23 that wrote a bunch of homicide books, real famous</p> <p>24 detective and I put in for it and they sent me out.</p> <p>25 The department paid for it.</p>	<p style="text-align: right;">Page 68</p> <p>1 already had maybe a witness had seen somebody that they</p> <p>2 knew and we follow that lead. There was maybe just a</p> <p>3 handful of who-done-it's where we just had no clue who</p> <p>4 they were. Yeah, we just canvassed. We'd knock on</p> <p>5 doors. We'd try to look for surveillance video in the</p> <p>6 area. We'd see a car or something like that, but a</p> <p>7 good chunk of our investigation was, yeah, I saw</p> <p>8 so-and-so shoot so-and-so or stab so and so.</p> <p>9 Q. Yeah.</p> <p>10 A. We already had a suspect, a good suspect.</p> <p>11 Q. When you don't have a good suspect, how do</p> <p>12 you try to -- how do you try to narrow in on who the</p> <p>13 right suspect is?</p> <p>14 A. Believe it or not, we, again, we canvas.</p> <p>15 We knock on doors. Hey, did you hear anything? Did</p> <p>16 you see anything? Yeah, you know they saw this car or</p> <p>17 a lot of them are people calling in, you know, put</p> <p>18 something out, hey, did anybody in the area, did</p> <p>19 anybody have any -- any where we gave us some good</p> <p>20 leads and a lot of them came in from that. People</p> <p>21 calling in, hey, you know what, so-and-so told me he</p> <p>22 was involved in the shooting or he heard so-and-so and</p> <p>23 then we open up another door and we start looking into</p> <p>24 that.</p> <p>25 Q. What about ruling someone out? Is there a</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. Was that a -- was that the standard that if</p> <p>2 you were going to work homicide, you had to go to</p> <p>3 homicide school?</p> <p>4 A. I don't believe it was a standard. It was</p> <p>5 just some of the older guys told me, hey, look online,</p> <p>6 find yourself a good course and if they're really good</p> <p>7 courses, you'll learn some interesting stuff.</p> <p>8 Q. Got it. So that was self initiated. It</p> <p>9 was something that you asked for permission to attend?</p> <p>10 A. Correct.</p> <p>11 Q. We -- are there -- so are there any</p> <p>12 particular principles you follow when you are</p> <p>13 investigating a case?</p> <p>14 A. Are there principles? Yeah. Thorough</p> <p>15 investigation, make sure you get everything right,</p> <p>16 listen, take your time, yeah, make sure you get it all,</p> <p>17 you document, everything's documented.</p> <p>18 Q. Is there a method you use to identify</p> <p>19 suspects?</p> <p>20 A. Sure.</p> <p>21 Q. What do you do?</p> <p>22 A. Gosh. Can you give me an example? A</p> <p>23 who-done-it, a I-don't-know, a --</p> <p>24 Q. Let's -- let's talk about a homicide.</p> <p>25 A. Okay. A good chunk of the time it was we</p>	<p style="text-align: right;">Page 69</p> <p>1 way -- are there methods by which you rule out someone</p> <p>2 and say, no, I guess they're not a potential suspect?</p> <p>3 A. Yeah. After, again, doing a thorough</p> <p>4 investigation, hey, where were you on this date, and</p> <p>5 hey, well so-and-so said you were with them or I was</p> <p>6 out of town, or okay, well, obviously, you're not --</p> <p>7 you have no involvement in this. Mm-hmm.</p> <p>8 Q. How do you know when a case is ready to</p> <p>9 present?</p> <p>10 A. Made an arrest, maybe get a good</p> <p>11 confession, everybody's done all their supplements, all</p> <p>12 the evidence is tagged, they're with the DA's office,</p> <p>13 did you guys miss anything and we present the case.</p> <p>14 Q. And in the Crimes Against Persons, was</p> <p>15 there a -- did you have a caseload of cases you were</p> <p>16 working at any given time?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And about how many cases would you work at</p> <p>19 a time?</p> <p>20 A. Major cases? Usually, we were -- there was</p> <p>21 a good group of us so, yeah, I would -- if I was</p> <p>22 working already a major case and it was, yeah, we made</p> <p>23 an arrest but it's still a process to put everything</p> <p>24 together so they kind of would leave you alone but you</p> <p>25 would get all these other smaller cases, aggravated</p>

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1 assaults, sexual assault that you still had to work but
2 once I'm done with that major case then some other big
3 homicide case would come in and I would get pulled into
4 that one.

5 Q. So is it fair -- so are you saying that
6 most of the time, it would be one major case at a time?

7 A. Yes, sir, mm-hmm.

8 Q. And then some smaller cases?

9 A. Yes, correct.

10 Q. How many smaller cases at a time?

11 A. Maybe on a monthly basis it depends
12 anywhere from three to five or six give or take.

13 Q. Okay. Did you receive training
14 specifically on interviewing witnesses?

15 A. Again, it was a lot of it was formal
16 on-hands training, learning from other detectives. I
17 do recall the department when I was at CAP, there were
18 some big, real famous, I don't remember his name but
19 the guys would talk about it, the department I think
20 paid for him to come down and give us like a one-week
21 course on interview skills.

22 Q. Yeah. I saw in your file 32 hours of
23 criminal interview and interrogation techniques in May
24 2014. Does that ring a bell?

25 A. It does. Yes, sir, uh-huh.

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1 Q. And I guess just broadly, what -- what was
2 your training on how to interview witnesses?

3 A. What that particular training was about
4 or --

5 Q. I guess, let me pause. Do you remember any
6 other specific training on interviewing witnesses?

7 A. A lot of it was just observation from the
8 senior detectives listening to them.

9 Q. And what -- tell about me about that
10 observation what were the main things you took away
11 about interviewing witnesses?

12 A. I think everybody had a different
13 technique, try to get a little -- some pointers from
14 this particular detective and detective, this one, this
15 one, oh wow, that's interesting. I never heard that,
16 so yeah, a little bit from everybody.

17 Q. Anything in particular?

18 A. Gosh, no, sir. Again, everybody had a
19 different technique. The way they would interview
20 people. Some of them were natural, some were really,
21 really good at interviewing people. I was really
22 impressed by that.

23 Q. And what about the May 2014 training, what
24 was the takeaway from that?

25 A. I don't recall to be honest with you. I --

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1 some of it was a little funny the way examples they
2 would give us, the videos they would show and they were
3 just old. I mean, like, 70's, 80's videos and yeah,
4 they were just and yeah, I don't -- anything in
5 particular I remember from that -- from that training
6 to be honest with you.

7 Q. Do you find that witnesses sometimes feel
8 pressure when they are being interviewed by a police
9 officer?

10 A. Do I feel sometimes they feel pressured? I
11 think it's -- it's scary. I mean, to be in that
12 position, yeah, I'm pretty sure they feel a little
13 intimidated.

14 Q. Yeah. And have you observed that witnesses
15 worry that they might get in trouble if they're being
16 interviewed by a police officer?

17 A. I don't know if they feel like they're
18 going to get in trouble. Again, I think it's just
19 fear. Me, personally, I tell them, hey, just relax.
20 Just listen, you know, we'll figure you're a witness
21 you're not in trouble, you know, I just want to kind of
22 clarify some stuff or maybe you are a suspect after,
23 obviously, they've been Mirandized but like I said, I
24 just want to clarify some stuff, just don't be nervous.
25 I know it's nervous. I guarantee you if I were in your

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1 shoes I'd be nervous, too.

2 Q. And were you talking the same -- so did you
3 ever interview witnesses who were hostile to you?

4 A. Hostile?

5 Q. Yes.

6 A. Sure.

7 Q. And would you say that same sort of thing,
8 like, don't be nervous it's all going to be fine to a
9 witness who is hostile to you?

10 A. Yes. Or believe it or not, I had witnesses
11 that I just didn't have the time. I'm busy. I've got
12 to go to work. I'm like, this a homicide. Someone
13 died. This is important and yeah, no, no, I can't and
14 this and that and I said, listen. Please -- if you
15 don't talk the me now -- I don't know if this was true
16 or not, I said what's going to happen is they'll put on
17 the report you told me that you did see it. I just
18 want to get that on paper. Because I'm going to put
19 you on the report. You're going to have to testify in
20 court down the road, either do it now in front of me or
21 you're going to go in front of a jury and you're going
22 to have to testify then. Oh, okay. I guess I'll go
23 down there and talk to you, yeah.

24 Q. Does that ever work to your advantage a
25 witness being nervous?

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1 A. A witness being nervous? I just -- it
2 would be the opposite. I wouldn't want him or her
3 nervous. You know, just a clear mind and, you know,
4 just tell me what happened. What you remember, give me
5 details, what you saw. That would be important. I
6 wouldn't want them nervous to be honest with you.

7 Q. Okay. What about a suspect? Would you
8 want a suspect to be nervous?

9 A. I don't know about nervous. I never
10 thought about it. Why would you want to be nervous?
11 Just, you know, be truthful, tell me the truth. Yeah,
12 I don't know if I want him to be nervous.

13 Q. Was there a state of when you
14 interviewed -- and you've interviewed suspects in your
15 criminal investigations?

16 A. Correct.

17 Q. And when interviewing a suspect, is there a
18 state of mind you try to put them in?

19 A. I do, sir. Yes, sir.

20 Q. What kind of state of mind do you try to
21 put them in?

22 A. Again, relax, relax, you know, just be
23 truthful. A lot of times I tell them I said, listen, I
24 already know the answers to it. You know, the whole
25 who, what, where, when. I just need to know why, why

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1 it happened and just, you know, it is what it is and
2 just be honest with me and that was pretty much what I
3 went with.

4 Q. Sometimes witnesses provide inaccurate
5 information to the police, right?

6 A. Yes, sir.

7 Q. And they might just -- sometimes someone
8 might, like, sometimes it's innocent. It's just a
9 wrong memory, right?

10 A. Yes, sir.

11 Q. And sometimes a witness tries to deceive
12 the police?

13 A. I can't recall if I ever had any type of
14 experience like that or a statement like that to be
15 honest with you.

16 Q. What about a suspect? Have you ever had a
17 suspect try to deceive you in an interview?

18 A. Sure.

19 Q. And part of your job is to determine
20 whether the information you get is reliable, right?

21 A. Yes, sir.

22 Q. And one way to make sure that information
23 is reliable is to see if a witness or a suspect knows
24 facts about a crime that are not yet published; is that
25 right?

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1 A. Correct. Yes, sir.

2 Q. And to make sure that that information is
3 reliable, you have to withhold non-public information
4 from witnesses and suspects, right?

5 A. Yes, sir. On an ongoing investigation,
6 correct.

7 Q. Because if they just tell you the
8 non-public information that you gave them that doesn't
9 tell you anything about whether they're reliable or
10 not, right?

11 A. It depends.

12 Q. When would -- well, tell me about that, why
13 does it depend?

14 A. Well, it might be firsthand. Maybe they
15 were direct witnesses and I know that for a fact
16 already and then versus somebody that just heard
17 something on the news or watched something on social
18 media. Like, oh, I heard this. You can usually tell
19 which ones are -- are real.

20 Q. How can you tell?

21 A. Well, just keep asking questions. Okay,
22 well, I already -- I know the facts. I know the times,
23 the dates and, you know, people, like, well -- well,
24 this and that. I don't think you were there. I think
25 you're just probably something you heard or somebody

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1 told you or maybe somebody else was involved and
2 they're telling you and well, yeah. You're right, you
3 know, I -- I don't know. Something to that -- to that
4 extent, just a little more thorough investigation.

5 Q. Yeah. So you would be looking to see if
6 they give inconsistent information that doesn't match
7 with what's known?

8 A. Correct.

9 Q. And would you also be looking to see if
10 they can tell you something new, something they
11 couldn't have learned unless they knew it for
12 themselves?

13 A. Yes.

14 Q. And so does that mean you have to be
15 careful about revealing non-public facts to witnesses
16 and suspects?

17 A. Careful? Yes.

18 Q. And so you would wait, is it true that you
19 would wait to provide a non-public fact to a witness or
20 a suspect until you've seen if they know it themselves?

21 A. Can you repeat that? I don't understand
22 the question.

23 Q. Yeah. So say you know a detail that isn't
24 public about a crime. And you're trying to test the
25 reliability of a witness or a suspect to that crime.

<p style="text-align: right;">Page 78</p> <p>1 Are you -- are you going to share that non-public 2 detail with them or are you going to wait to see if 3 they know about it on their own first? 4 A. Oh, okay. No, see if they know first. 5 Q. You're going to see if they know first? 6 A. Yes. 7 Q. And is that because you need -- so put it 8 in the context of a confession, in a con -- in a 9 confession, it's really important that the suspects 10 provide the details for themselves -- by themselves, 11 right? 12 A. Yes. 13 Q. Okay. And you're going to have to 14 accurately document how you got that information? 15 A. Accurately document from the suspect 16 telling me this information, or -- 17 Q. Let me put it this way. If you gave a 18 non-public fact to a witness or a suspect, you would 19 want to document that, right? 20 A. To a suspect, I -- it is being documented 21 because its being recorded for the most part, yeah. 22 Q. Okay. What about to a witness? 23 A. Like I would document a witness this is -- 24 this is what's out on the public and can you tell me 25 about this I -- I don't understand.</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And do you try to avoid leading questions 2 when interviewing the witness? 3 A. Yes, sir. 4 Q. Okay. And why do you avoid leading 5 questions? 6 A. Because I -- just from experience I've also 7 been told let them tell you the story. It's better 8 just to be quiet and just even silence is the best 9 thing to just sit there and if you've got to stare at 10 each other forever and let that person just talk. 11 Q. And are you also concerned that you might 12 -- you might get them to say something because of your 13 leading question instead of what they have to say? 14 A. Absolutely. Yes, sir. 15 Q. And when it comes directly from the 16 witness, that means that -- is it true that when it 17 comes from the witness, you don't have to worry about 18 it being a leading question because a witness came up 19 with it for themselves? 20 A. Yeah. The witness came up with it himself 21 if he or she is a witness. 22 Q. And so when you take a statement do you try 23 to put it in the witness's words? 24 A. I try to, yes. Correct. Uh-huh. 25 Q. And you're typing it, it's not verbatim.</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Yeah. What I mean is say you're -- if 2 you're sharing information with a witness and the 3 information you are sharing with that witness is not 4 publicly available, your report should document that 5 you shared that non-public information, right? 6 A. I could probably tell the witness, like, 7 hey, this is what I'm working -- obviously, the public 8 doesn't know everything that I know of. Hey, I know 9 dates and times. Are you sure this is -- but would I 10 document it anywhere? Like, when I'm taking the 11 statement? I -- I -- I don't know. It depends. I 12 guess, but I'm pretty much taking what -- what he or 13 she is telling me as much as I can. But I don't tell -- 14 I'm not documenting what I'm asking. I guess -- 15 Q. So as a general rule, you wouldn't record 16 the information that you gave to the witness. You 17 would just record what they said? 18 A. I'm asking the questions and they, yeah, I 19 guess. I guess because if I typed everything I would 20 be there for hours and I'm just pretty much -- that 21 person is telling me. Would I kind of tell them, okay, 22 that's good. Now tell me about this. But I wouldn't 23 be putting in there I then asked them this, I then 24 asked them this. No, I wouldn't on a witness 25 statement, no.</p>	<p style="text-align: right;">Page 81</p> <p>1 So you do -- it is you trying to say what they told you 2 not a word-for-word in a statement; is that right? 3 A. I try word-to-word but I'm not that great 4 of a typist. So. 5 Q. And you -- when you do it word-for-word, 6 does that make it more reliable and useful? 7 A. It -- yes, it does, mm-hmm. 8 Q. Okay. And everything you've just talked 9 about is that the way you just talked about 10 interviewing witnesses, is that consistent with your 11 training? 12 A. Again, I can't recall if I had actual 13 training on taking witness statements. It just in my 14 career -- this is, you know, I -- this guy did it this 15 way, did it this way and I learned a little bit from 16 everybody and I said, okay I liked that one. 17 Q. And that's the way you did questions the 18 whole time you were in Crimes Against Persons? 19 A. For the witness statements, yeah. Witness 20 statements, they come in and I'd sit down and okay, sit 21 down. Tell me what happened and I'd sit there typing 22 and typing. After I was done, I'd read it to them. 23 Okay, this is what you told me. This is the -- is that 24 correct? No, no. This -- okay, let me go back and fix 25 that. Once I'm done with the whole statement, I hand</p>

<p style="text-align: right;">Page 82</p> <p>1 it to them, they read it. Is everything good? Oh, you</p> <p>2 know what, Detective, this isn't correct. Okay, let's</p> <p>3 fix that and then we'd go back and forth like that</p> <p>4 until we got it right.</p> <p>5 Q. Would you use the same techniques when</p> <p>6 taking a recorded statement?</p> <p>7 A. Recorded? Once you record, it's -- you're</p> <p>8 on. You can't stop and go off the record and turn it</p> <p>9 back on. It's a constant, yeah.</p> <p>10 Q. But everything you said about not leading</p> <p>11 questions, not -- not introducing, you know, trying to</p> <p>12 test reliability, not introducing non-public facts, you</p> <p>13 would do the same thing in a recorded statement; is</p> <p>14 that right?</p> <p>15 A. To the -- to the suspect, yes, uh-huh.</p> <p>16 Q. And would you do the same thing in any</p> <p>17 interview, where you are developing evidence on a case?</p> <p>18 A. When you -- when evidence is coming in,</p> <p>19 hey, hey, ask him -- hey, we just heard about this.</p> <p>20 Ask him this. That just came in. Yeah, I'd say, well,</p> <p>21 hey, tell me about so-and-so and, you know, hopefully</p> <p>22 they'll be able to give me information on that.</p> <p>23 Q. Right. So you would avoid asking leading</p> <p>24 questions in any conversation with a witness where</p> <p>25 you're trying to develop evidence?</p>	<p style="text-align: right;">Page 84</p> <p>1 use?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Would you ask that witness how they know</p> <p>4 that the suspect was not involved?</p> <p>5 A. Yes.</p> <p>6 Q. Would you ask for corroborating details to</p> <p>7 try to find out if they were telling the truth?</p> <p>8 A. Yes.</p> <p>9 Q. And if you saw inconsistencies, would you</p> <p>10 challenge their testimony?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Is there anything else you would do</p> <p>13 in that situation to try to -- is there anything that</p> <p>14 is typically a part of corroborating a witness</p> <p>15 statement, something a witness has said?</p> <p>16 A. I guess with other witnesses.</p> <p>17 Q. One other question, is it fair that you</p> <p>18 like to take statements at the police department</p> <p>19 because, you know, you're there, you've got a computer</p> <p>20 to take a statement, it's just a good location that</p> <p>21 way?</p> <p>22 A. Correct. Any police station in our -- in</p> <p>23 El Paso, yeah, safety reasons also.</p> <p>24 Q. All right. And do you ever take statements</p> <p>25 at the DA's office?</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Sure. Yes, sir.</p> <p>2 Q. And you would try to evaluate the</p> <p>3 reliability of a witness in any conversation when</p> <p>4 you're with a witness when you are trying to evaluate</p> <p>5 evidence?</p> <p>6 A. I try to, yes, sir.</p> <p>7 MR. HILKE: Can we take a quick break here?</p> <p>8 I was going to suggest a five-minute break. I don't</p> <p>9 know if folks need more time.</p> <p>10 MR. MARTINEZ: Five minutes is fine.</p> <p>11 ONLINE VIDEO TECH: We are off the record.</p> <p>12 The time is 11:32.</p> <p>13 (Break from 11:32 a.m. until 11:41 a.m.)</p> <p>14 ONLINE VIDEO TECH: We're back on the</p> <p>15 record for the deposition of Detective Hector Loya</p> <p>16 being conducted by videoconference. My name is Sydney</p> <p>17 Little. Today is May 9, 2022, and the current time</p> <p>18 11:41 a.m.</p> <p>19 BY MR. HILKE:</p> <p>20 Q. Detective, it's important to corroborate</p> <p>21 information from a witness; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And so say you've got a suspect on a case</p> <p>24 and you have a witness who says that that suspect was</p> <p>25 not involved. Is that -- is that a hypothetical we can</p>	<p style="text-align: right;">Page 85</p> <p>1 A. No, sir.</p> <p>2 Q. No. Would you ever interview a witness at</p> <p>3 the DA's office?</p> <p>4 A. No, sir. Correction. I did take a witness</p> <p>5 statement on this case at the DA's office, yes.</p> <p>6 Q. Okay. Was that the only time?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And why did you, if you remember why did</p> <p>9 you take the statement at the DA's office in this case?</p> <p>10 A. On that particular case was we were, our</p> <p>11 supervisors at the CAP office asked myself and</p> <p>12 Detective Armendariz to go down to the DA's office,</p> <p>13 meet with an ADA who had a witness there that needed to</p> <p>14 give a statement.</p> <p>15 Q. Okay. So the ADA had already -- already</p> <p>16 had the witness at the office?</p> <p>17 A. Correct.</p> <p>18 Q. Great. Have you ever -- so have you ever</p> <p>19 used physical force against a suspect or a witness</p> <p>20 inside a police building?</p> <p>21 A. No, sir.</p> <p>22 Q. Have you ever witnessed another police</p> <p>23 officer use physical force against a suspect or a</p> <p>24 witness inside a police building?</p> <p>25 A. No, sir.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. Have you ever heard of another police 2 officer using physical force against a suspect or a 3 witness inside a police building? 4 A. No, sir. 5 Q. And have you ever heard that another police 6 officer was disciplined for using physical force 7 against a suspect or a witness inside a police 8 building? 9 A. No, sir. 10 Q. Have you ever witnessed another officer 11 testify falsely under oath? 12 A. No, sir. 13 Q. Have you ever heard of another officer 14 testifying falsely under oath? 15 A. No, sir. 16 Q. And have you ever heard of an officer being 17 disciplined for testifying falsely under oath? 18 A. No, sir. 19 Q. Have you ever heard of another officer 20 being disciplined for their testimony in any way? 21 A. No, sir. 22 Q. Were you disciplined as a result of the 23 incident that caused to you leave CAP, the testimony 24 incident? 25 A. No, sir.</p>	<p style="text-align: right;">Page 88</p> <p>1 it gets big, this is going to turn into something big 2 so stop doing stuff like that, yeah. 3 Q. And would you have felt comfortable 4 reporting another officer to Internal Affairs? 5 A. Gosh. I would if it was something really 6 serious, yeah, somebody's rights were violated and, you 7 know, excessive use of force, yeah, definitely. I 8 wouldn't have a problem doing it. 9 Q. Yeah. And when you say you wouldn't have a 10 problem, do you mean you would do it proactively if you 11 saw it you would just call Internal Affairs and say, 12 hey, I saw this there's a -- 13 A. I don't know if I would call Internal 14 Affairs but I'd definitely let my supervisors know, my 15 direct supervisor know, yeah. 16 Q. Okay. And why wouldn't you call -- why 17 would you go to your supervisor instead of Internal 18 Affairs? 19 A. Because we have a chain of command. 20 Q. So what is the chain of command? 21 A. As a patrolman, my direct chain of command 22 would be my sergeant and then lieutenant and then 23 commanders, yeah, up the chain. 24 Q. And that's all the way up to the Chief of 25 Police?</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Was an investigation ever done? 2 A. Not to my knowledge, no, sir. 3 Q. Have you ever reported another officer to 4 Internal Affairs for committing misconduct? 5 A. Have I reported any officer? No, sir. 6 Q. Have you ever witnessed another officer 7 commit misconduct? 8 A. Have they made mistakes? Yes, sir, I have. 9 Q. What kind of mistakes have you witnessed? 10 A. It all -- it all, during our patrol time, 11 they took too long eating lunch, a place where they 12 shouldn't have been, you know, they told a supervisor 13 they were supposed to do this, they didn't do it, you 14 know, just make sure they don't get into trouble. 15 Nothing where I would go to Internal Affairs and file a 16 complaint or anything like that. 17 Q. Yeah. So things that you -- are those 18 things that you didn't report to Internal Affairs 19 because you didn't think they were serious enough? 20 A. Not -- not where somebody stole something 21 or somebody's rights were violated or someone got 22 physically hurt, no. They were just -- that's going to 23 come back and stop doing stuff like that, you know. I 24 -- I was a field training officer and out in the field, 25 too and I kind of just squashed things, like, hey, if</p>	<p style="text-align: right;">Page 89</p> <p>1 A. I guess so, yes, sir. 2 Q. And where does Internal Affairs sit in the 3 chain of command? 4 A. That's a good question, sir. I'm not -- I 5 know they're up there. I believe next to the Chief of 6 Police, yeah. 7 Q. But if you saw something that was an 8 Internal Affairs issue, you would want it to get 9 Internal Affairs up through the chain of command? 10 A. I've never been in that position but if I 11 did, I would still go to my supervisor but if they 12 didn't do anything then I would go up the chain and go 13 to my lieutenant and then if I have to, I guess, I 14 would go all the way to Internal Affairs. 15 Q. Okay. And so what was your understanding 16 of your responsibility if you witnessed misconduct by a 17 fellow officer? 18 A. You would notify somebody, you -- your 19 chain of command, you would let your supervisors know. 20 Q. Okay. Did you ever -- did you ever 21 personally observe an officer reporting misconduct by 22 another officer? 23 A. I don't recall. I don't think I have. 24 Q. And were you aware of -- and did -- were 25 you aware of any situations in which that had happened</p>

<p style="text-align: right;">Page 90</p> <p>1 where an officer reported another officer?</p> <p>2 A. Maybe I did, maybe I've heard throughout my</p> <p>3 career, hey, so-and-so went and told somebody or the</p> <p>4 supervisor or something like that but, yeah, I --</p> <p>5 direct I can't name the incident or the officer.</p> <p>6 Q. Yeah. So nothing that leaves a specific</p> <p>7 impression?</p> <p>8 A. No, sir.</p> <p>9 Q. And do you believe some officers would</p> <p>10 hesitate to report -- or strike that.</p> <p>11 In your experience are officers hesitant to</p> <p>12 report one another for misconduct?</p> <p>13 MR. DARNELL: Object to form.</p> <p>14 BY MR. HILKE:</p> <p>15 Q. You can answer. Go ahead.</p> <p>16 A. Can you repeat the question again? I'm</p> <p>17 sorry.</p> <p>18 Q. Yeah. The question was in your experience,</p> <p>19 are some officers hesitant to report their fellow</p> <p>20 officers for committing misconduct?</p> <p>21 MR. DARNELL: Same objection.</p> <p>22 A. I don't think so. I mean, if they did</p> <p>23 something really bad, I think they would also do the</p> <p>24 right thing and tell the supervisors.</p> <p>25 BY MR. HILKE:</p>	<p style="text-align: right;">Page 92</p> <p>1 if you are in trouble, your fellow officers are going</p> <p>2 to come out and help you?</p> <p>3 A. Yes.</p> <p>4 Q. And they're going to do that even if it's</p> <p>5 dangerous because you have each other's backs?</p> <p>6 A. Yes.</p> <p>7 Q. And so there is a level of trust that's</p> <p>8 needed between officers?</p> <p>9 A. Yes.</p> <p>10 Q. And so you don't snitch on little things</p> <p>11 between your fellow officers?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever been trained on preserving</p> <p>14 evidence?</p> <p>15 A. Have I been trained on preserving? Yes,</p> <p>16 sir, I have.</p> <p>17 Q. Okay. When you were trained?</p> <p>18 A. I guess early in during the academy, my</p> <p>19 police academy basic -- basic evidence, preservation,</p> <p>20 lifting prints, processing scenes, what not to do, what</p> <p>21 to do.</p> <p>22 Q. And are you trained on -- is part of your</p> <p>23 training identifying whether information is relevant to</p> <p>24 a case?</p> <p>25 A. I can't recall if we actually had formal</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. And when you say really bad, is that the</p> <p>2 same stuff you were talking about before, like a civil</p> <p>3 rights violation or stealing or excessive force?</p> <p>4 A. Yes, sir, mm-hmm.</p> <p>5 Q. What about for, like, you were talking</p> <p>6 about, you know, same, you know, fudging the truth with</p> <p>7 a supervisor or being, you know, taking a lunch that's</p> <p>8 too long?</p> <p>9 A. Correct, yeah. That's, that's -- I -- I</p> <p>10 don't see officers snitching on each other for stupid</p> <p>11 things like that. Like, hey, you call in sick, he was</p> <p>12 drunk and this and that. Yeah, I don't think that</p> <p>13 would happen to be honest with you. They would be</p> <p>14 hesitant to do that.</p> <p>15 Q. And if an officer made a report that wasn't</p> <p>16 serious enough about misconduct, could they expect, you</p> <p>17 know -- would you expect that there would be negative</p> <p>18 consequences for them among their fellow officers?</p> <p>19 A. I don't know. Negative consequences, yeah.</p> <p>20 I don't think that person would be in good standings</p> <p>21 with the rest of the officers.</p> <p>22 Q. When -- is there a -- do you rely on your</p> <p>23 other officers for your own safety as a police officer?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And so as an officer you want to know that</p>	<p style="text-align: right;">Page 93</p> <p>1 training on that. I think that's just common sense.</p> <p>2 Q. Are you trained on your responsibilities to</p> <p>3 share evidence with the prosecution?</p> <p>4 A. Share evidence with prosecution? Yeah.</p> <p>5 Q. And what are you trained is your</p> <p>6 responsibility?</p> <p>7 A. Tell the -- can you repeat the question</p> <p>8 again? I'm sorry.</p> <p>9 Q. Yeah. What are you trained -- what does</p> <p>10 your training say that your responsibility is?</p> <p>11 A. To preserve evidence, don't tamper with it,</p> <p>12 keep it as -- keep it pristine, call someone else to, I</p> <p>13 mean, depends what type of evidence it is. Call the</p> <p>14 crime scene out to recover it, document it.</p> <p>15 Q. Okay. And that includes both evidence of</p> <p>16 guilt and innocence for the suspects in the case,</p> <p>17 right?</p> <p>18 A. Oh, yes, sir, mm-hmm.</p> <p>19 Q. And if you find evidence in an</p> <p>20 investigation, would you ever fail to mention that in</p> <p>21 your notes?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay?</p> <p>24 MR. DARNELL: Sorry, Roy. Can you repeat</p> <p>25 the first part of that question? I didn't hear it.</p>

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1 MR. HILKE: Yes, I can.
 2 BY MR. HILKE:
 3 Q. The question was: If you found evidence
 4 that was relevant, would you ever fail to mention that
 5 in your notes?
 6 A. I would never fail to mention it.
 7 Q. Okay. And you would -- you would never
 8 fail to preserve it; is that right?
 9 A. I would never fail to preserve it, correct,
 10 yes.
 11 Q. And how -- how do you know if the evidence
 12 you find is relevant or not?
 13 A. It's evidence whether it's relevant or not
 14 I'm -- I still have to hold on to it or preserve it.
 15 Q. Yes. So anything that could have to do
 16 with the case, you are going to make sure it gets
 17 preserved?
 18 A. Yes, sir.
 19 Q. So do you recall speaking with Oscar Gomez
 20 in relation to the Electric -- Electric Street
 21 shootings?
 22 A. Oscar Gomez, I went over my notes over the
 23 weekend, he's the person that I assisted Detective
 24 Sanchez back in December of 2014.
 25 Q. And do you remember how -- so Mr. Gomez, do

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1 you remember how he was -- do you remember where you
 2 interviewed him?
 3 A. Again, initially, when I first started this
 4 was back January 2014 up until about March 2014, I was
 5 involved, and then from March all the way to December I
 6 was no longer involved. I got pulled from it because
 7 if I recall maybe, I think there was a -- a major case
 8 that I got pulled away and I was no longer involved. I
 9 just remember that incident Detective Sanchez grabbing
 10 me and saying, hey, can you help me go interview this
 11 guy. He's referenced the Daniel Villegas case. Yeah,
 12 sure, whatever. And I was -- since I kind of knew
 13 about it months down the road. I recall we -- it was
 14 just like a 5-minute, 5-10 minute drive from our
 15 office. He goes, hey, he's got warrants. He goes -- I
 16 can't remember if we got there and they had called
 17 uniformed officers or if they were already there. We
 18 were there. Detective Sanchez asked him he needed to
 19 get a statement from him. Again, I don't know what he
 20 was going to ask, what his involvement was in the case.
 21 Uniform officers drove him back to our office and he
 22 gave Detective Sanchez a statement.
 23 Q. And so the -- is that -- so did the -- was
 24 he -- was Oscar Gomez brought in on traffic tickets for
 25 that interview?

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1 A. I was made aware by Detective Sanchez that
 2 he did have traffic tickets and they were arresting him
 3 for traffic tickets.
 4 Q. And why would you bring in a witness on an
 5 arrest for traffic tickets instead of inviting them to
 6 come in for an interview?
 7 A. A lot of times witnesses don't want to come
 8 in voluntarily, so we were able to bring him in on a
 9 traffic tickets.
 10 Q. So it makes easier to bring the witness in?
 11 A. Correct.
 12 Q. So did Ray talk with you about the plan
 13 and, you know, by -- we're talking about Ray Sanchez is
 14 the detective who was -- who pulled you in for this; is
 15 that right?
 16 A. Correct.
 17 Q. Did you talk with Ray about the plan for
 18 interviewing Oscar?
 19 A. I don't recall talking to him about any
 20 plan, yeah.
 21 Q. Okay. And Oscar gave a videotape
 22 statement, right?
 23 A. Yes, sir.
 24 Q. And do you remember where you were when
 25 that statement was being taken?

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1 A. Yes, sir. I actually assisted with setting
 2 up the recording -- recording, turning on the cameras,
 3 and I was actually monitoring inside the monitor room
 4 during the interview.
 5 Q. And so you can see the video of the
 6 interview as it's unfolding?
 7 A. I have access to video and audio, correct.
 8 Q. And why were you in the monitor room
 9 instead of in the room with Oscar and Ray?
 10 A. The only thing I can remember is because I
 11 probably had no clue what they were going to be asked.
 12 I had no idea. Again, I just got pulled in just to
 13 help them because I had worked on it nine months
 14 earlier.
 15 Q. Do you remember a period when Ray left the
 16 room to consult with you?
 17 A. According to my investigative supplement, I
 18 time stamped the interview and there was a couple of
 19 breaks there. I don't recall if Ray ever came in and
 20 spoke to me or he went to his desk to grab something or
 21 I don't recall that, yeah.
 22 Q. So -- so you don't remember whether Ray
 23 spoke with you during those breaks?
 24 A. I don't remember, sir.
 25 Q. Okay. Did -- was Ray working with any

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1 other detective at the time on -- on this?

2 A. Again, sir, earlier the beginning it was
3 myself and Detective Armendariz, took a couple of
4 statements, looked for a couple of people and then in
5 March, I got pulled away to go do something else and
6 then I believe Detective Armendariz and Detective
7 Sanchez continued working it. I don't know what they
8 did in between that to be honest with you. I didn't
9 keep up on it. I had no clue what was going on.

10 Q. That day did you and Detective Sanchez, was
11 there anyone else investigating the case with the two
12 of you?

13 A. Investigation is a pretty big word. I
14 didn't really investigate. I just kind of -- again, it
15 was probably something to the point where, hey, dude.
16 I believe maybe Detective Armendariz wasn't there for
17 that day. I'm pretty sure if he would have been there,
18 they probably would have gone in there and interviewed
19 him but, again, we don't go by ourselves, so we grab
20 somebody to go with us.

21 Q. Right. You were there because Ray couldn't
22 do it alone, right?

23 A. Correct, yes, sir.

24 Q. There wasn't some third officer working
25 with the two of you that day on this?

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1 A. There probably was. I can't say for sure
2 but, again, since I already had done it nine months
3 prior, probably easier and says, hey, dude, remember
4 Daniel Villegas case? Oh, yeah. I don't know if
5 that's exactly what we said. Hey, this -- there's
6 another witness. I don't remember if he said patrol
7 just found him or can we go to the house to see if he's
8 there, something to that, yeah, sure. I'll go with you
9 but I didn't know what was going on.

10 Q. So are you saying it's possible when you
11 and Ray go down to interview Mr. Gomez that there is a
12 third officer in the mix who is also helping with that?

13 A. According to my notes, uniformed officers.
14 I don't know. We got there first and then called
15 uniformed officers.

16 Q. Okay.

17 A. Or they were already there and they found
18 the guy to be honest with you or we just knocked on the
19 door and Mr. Gomez opened the door. I don't recall
20 that whole incident to be honest with you.

21 Q. Was there -- did any other detectives come
22 with you?

23 A. No. I would have written that down. I
24 know for sure it was just me and Detective Sanchez.

25 Q. Okay. So if Ray tells Mr. Gomez that he's

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1 going to take a minute and go talk to his partner, is
2 that going to be referring to you?

3 A. Okay. I'm sorry. Can you repeat that?

4 Q. I can. So when Ray is interviewing Oscar,
5 he says, "I'm going to go talk with my partner," is he
6 referring to you or someone else?

7 A. And this is during the video statement?

8 Q. Yes.

9 A. Yeah. I guess, that's, yeah, because
10 again, I think and according to the time stamp it's
11 probably after 4 and I think a big chunk everybody's
12 gone already.

13 Q. I think that's right. And you don't
14 remember if he talked to you or not actually though?

15 A. I don't recall to be honest with you, sir.

16 Q. So when Ray called you in to work on -- to
17 help him interview Oscar, had you worked with Ray
18 before?

19 A. Oh, yeah. Many times, sir, not on this
20 particular case.

21 Q. Okay. And how many times would you say?

22 A. In three years, more than 10.

23 Q. Did you know each other back when you were
24 in patrol?

25 A. No, sir.

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1 Q. Okay. And can you give me an example of a
2 case you worked on Ray with before this one?

3 A. Oh, yes, sir. Oh, various cases, homicide
4 cases, suicides. We would get called out together on
5 the weekends, late hours, just various cases.

6 Q. And so had you before had you observed Ray
7 talking, Ray doing witness interviews before?

8 A. Yes, sir.

9 Q. Had you seen him interview suspects also?

10 A. Oh, yes, sir.

11 Q. Okay. How do you describe Ray's style?
12 Well, how did he approach witnesses?

13 A. It depends. I guess, how he felt about
14 them, how -- what kind of vibes he was getting from
15 them. He was a really good interviewer.

16 Q. What was good about him?

17 A. His experience. He just listened really
18 good and very knowledgeable, yeah, I learned a lot of
19 good stuff from him.

20 Q. When you say he was knowledgeable, like,
21 what did he know, like, what kind of knowledge did he
22 have?

23 A. I mean, again, it's just it comes with
24 experience. Just sitting in so many interviews, taking
25 suspect statements, just building rapport with people.

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1 He was just really good at it. So, again, some people
2 are just not -- he's a good talker. If you get a
3 chance to talk to him. He speaks really well very
4 elegantly and he knows what he's doing.

5 Q. Did you find that witnesses responded well
6 to him?

7 A. I -- that I could recall, I never saw a
8 witness not -- not respond to him or -- or talk to him.

9 Q. So Oscar was handcuffed during this
10 interview, wasn't he?

11 A. I can't recall if he was handcuffed during
12 the interview or he was -- obviously, if he's in
13 custody, again, I can't remember if officers when we
14 were at the house which is just a couple, a few minutes
15 down the road, they handcuffed him and they brought him
16 over to us or we followed each other. I can't recall
17 that information but I think for the most part, I don't
18 think -- I may be wrong but check out the time we
19 usually, yeah, they might be handcuffed but once we get
20 into the interview room, we would un -- take the
21 handcuffs off or for safety reasons, maybe handcuff
22 them to the chair that they're sitting in but, yeah, I
23 don't recall that particular incident or that
24 interview.

25 Q. And so what I'm hearing is that, is it

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1 correct that you are doing a witness interview if you
2 can, you want to un-handcuff them or just handcuff them
3 to the chair?

4 A. In an interview even the suspects are -- or
5 we feel we're going to be okay, you know, could be
6 someone that just killed somebody, you know, we may --
7 he or she may not be handcuffed. She may -- may be one
8 handcuff to the chair but, yeah. In my years being
9 there I don't think I ever saw anybody handcuffed with
10 their hands in the back during an interview to be
11 honest with you. I don't think I ever saw, suspect or a
12 witness.

13 Q. And why is that? What is the reason for
14 taking them out of full handcuffs during an interview?

15 A. I guess make them feel more comfortable. I
16 mean, it's uncomfortable to be sitting in the chair
17 with your hands to the back, yeah, just, you know, make
18 them feel at ease as much as best as we can.

19 Q. And is that -- does that help to sort of --
20 does that go along with the message you talked about of
21 we just want the truth, just tell the truth, like,
22 we're not out to get you, we just want the truth from
23 you?

24 A. That's pretty deep. I didn't know if
25 that's the reason why we did it. I just -- I just

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1 noticed people were doing that and I just and to this
2 day, I still do the same thing, yeah.

3 Q. Were you aware of any safety concerns about
4 Carlos Ortega. Goodness. Here I am reading off of the
5 screen. Let me try again.

6 Were you aware of any safety concerns with
7 Oscar Gomez?

8 A. As I recall, no, sir.

9 Q. And would you typically, in the most
10 serious thing he was in for, he was brought in for was
11 traffic tickets; is that right?

12 A. At that, yeah, during that, yeah, that's
13 all I know he was wanted for was the traffic tickets.

14 Q. And the traffic ticket arrest might -- how
15 do I put this, Oscar Gomez wasn't facing a long prison
16 sentence from those traffic tickets, right?

17 A. I don't believe so. No, sir.

18 Q. He would have been ill advised to flee or
19 flight based on an arrest for traffic tickets?

20 A. Yes, sir, but I've seen some crazy stuff
21 going down for something simple, yeah.

22 Q. Fair enough. Did you observe anything in
23 Mr. Gomez's demeanor that led you to think he was a
24 flight or a safety risk?

25 A. Not that I recall, no, sir.

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1 Q. Would it -- would it help to review the
2 video?

3 A. Oh, absolutely, please.

4 Q. I'm going to show you a few minutes of the
5 video now. I'm not going to watch the full thing
6 because it's too long but I'm just going to play the
7 first couple of minutes. Okay. Can you see the video
8 there?

9 A. Yes, sir, I can.

10 Q. Okay. And does the -- I'm going to play it
11 for a few seconds and then ask if you can hear the
12 audio.

13 (Video played)

14 Q. Okay. I know I can't hear the audio. Can
15 you hear the audio?

16 A. No, sir.

17 Q. I will try one more time.

18 (Video played)

19 Q. Okay. Can you see this video?

20 A. Yes, sir.

21 Q. And can you hear the video?

22 A. Yes, sir.

23 Q. For the record this is Exhibit 4, Oscar
24 Gomez videotaped interview and I am playing it from the
25 beginning.

<p style="text-align: right;">Page 106</p> <p>1 (Video Exhibit 4 played)</p> <p>2 VIDEO PLAYING: How's it going, Oscar? Are</p> <p>3 you ready.</p> <p>4 Yes. How are you doing, sir.</p> <p>5 Pretty good. Okay. My name's Detective</p> <p>6 Sanchez, Ray Sanchez. (Undecipherable) Unit 7. Can</p> <p>7 you state your name? Oscar Gomez.</p> <p>8 Your date of birth, please.</p> <p>9 3/24/77.</p> <p>10 Okay. Do you know where you're at right</p> <p>11 now.</p> <p>12 Yes.</p> <p>13 Where are you.</p> <p>14 In the Central, is it Central.</p> <p>15 At the police headquarters.</p> <p>16 Police headquarters.</p> <p>17 Yeah, close to Central. 911 North Rainer.</p> <p>18 Okay. Today is December the 4th and it's 5:11 p.m.</p> <p>19 according to my phone here. Okay. The reason you are</p> <p>20 here, obviously, well, first and foremost, you're here</p> <p>21 you have some tickets, right.</p> <p>22 Yes, sir.</p> <p>23 You are under arrest the -- some officers</p> <p>24 arrested you today for some tickets.</p> <p>25 Yes.</p>	<p style="text-align: right;">Page 108</p> <p>1 Okay. What do you know about Daniel</p> <p>2 Villegas? What -- I mean, you said you went to middle</p> <p>3 school with him. Do you know that he was charged with</p> <p>4 murder.</p> <p>5 Yes, yes.</p> <p>6 Do you know when....</p> <p>7 (Video stopped.)</p> <p>8 BY MR. HILKE:</p> <p>9 Q. I've stopped playing the video at this</p> <p>10 time.</p> <p>11 MR. DARNELL: Wally, real quick. You had</p> <p>12 that up there. Looked like yours was 27 minutes long.</p> <p>13 MR. HILKE: Mm-hmm.</p> <p>14 MR. DARNELL: The one that you sent us this</p> <p>15 morning is only 15 minutes long.</p> <p>16 MR. HILKE: Is that right?</p> <p>17 MR. DARNELL: Yes. 15 minutes and one</p> <p>18 second long.</p> <p>19 MR. HILKE: Give me one second. I'm not --</p> <p>20 I don't anticipate going back into it. Let me confirm</p> <p>21 that at the break. I'm not sure why that is.</p> <p>22 MR. DARNELL: Okay. I want to make sure I</p> <p>23 have the right one.</p> <p>24 MR. HILKE: Certainly. And if I sent you</p> <p>25 the wrong one, I'll get you the right one.</p>
<p style="text-align: right;">Page 107</p> <p>1 Where were you arrested at.</p> <p>2 My house.</p> <p>3 Okay. They're just traffic tickets, right.</p> <p>4 Yes, sir.</p> <p>5 Okay. The reason I'm talking to you is I</p> <p>6 want the talk to you about something else, not</p> <p>7 necessarily about your tickets but the case number that</p> <p>8 I want to talk to you about is 93-100037, okay.</p> <p>9 Yes.</p> <p>10 And it's a murder case from 1993 in which</p> <p>11 an individual by the name of Daniel Villegas was</p> <p>12 charged with murder. He was charged with murder two</p> <p>13 times, two people died and two people survived. At</p> <p>14 least according to the case, he shot at four people,</p> <p>15 okay, and two survived but all right. Do you know</p> <p>16 Daniel Villegas.</p> <p>17 Yes, sir.</p> <p>18 Okay. How do you know Daniel Villegas.</p> <p>19 Went to middle school together.</p> <p>20 Okay. Which school was this.</p> <p>21 (Unintelligible).</p> <p>22 (Unintelligible). And do you know, I mean,</p> <p>23 Daniel Villegas, I don't know if it's a common name or</p> <p>24 not but do you which Daniel Villegas I'm talking about.</p> <p>25 Yes, sir.</p>	<p style="text-align: right;">Page 109</p> <p>1 BY MR. HILKE:</p> <p>2 Q. Okay. So, Detective, you just viewed a few</p> <p>3 minutes of that interview with Ray and Oscar Gomez; is</p> <p>4 that right?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And do you remember what Oscar Gomez's</p> <p>7 demeanor was like that day?</p> <p>8 A. The same way he looks like on video, really</p> <p>9 quiet, exactly the same way, really laid back.</p> <p>10 Q. So he seemed quite and laid back that day?</p> <p>11 A. Yes, mm-hmm.</p> <p>12 Q. Okay. And did you -- did you ever -- did</p> <p>13 talk to Oscar at all before he was interviewed?</p> <p>14 A. I don't recall if I -- if the only time I</p> <p>15 talked to him would probably be at the house at the</p> <p>16 first time we made contact, maybe, I'm Detective Loya,</p> <p>17 that's probably it. Again, I didn't have the</p> <p>18 information and details of what we were going to</p> <p>19 interview him about.</p> <p>20 Q. Okay. And when you say at the house, where</p> <p>21 was that?</p> <p>22 A. At his residence. According to my notes, I</p> <p>23 think it was Altura Street which is about a five-minute</p> <p>24 drive from our office.</p> <p>25 Q. Okay. Did Oscar ride back with you to the</p>

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1 police station?

2 A. I'm not too sure. I'm pretty sure he rode
3 with the uniformed officers back to our office.

4 Q. Just one second, please. I'm going to show
5 you another document now. Give me one second I'm going
6 to share my screen again. Okay. So one second, okay.
7 Can you see the document I am showing you now?

8 A. Yes, sir.

9 Q. This is Exhibit 2. Is this your
10 supplemental report?

11 A. It looks like it. Yes, sir.

12 Q. Okay. I am going to take you down to
13 Page 6 and you have a few notes about locating Oscar
14 Gomez. Do you see that on the screen?

15 A. Yes, sir, I do.

16 Q. And this is on December 4, 2014; is that
17 right?
18 A. Correct. Yes, sir.
19 Q. And it says that "Detective Sanchez in
20 locating the listed person" -- I'm sorry. "Undersigned
21 assisted Detective Sanchez in locating the listed
22 person, Oscar Gomez, for questioning in regards to the
23 listed case." Is that right?

24 A. Yes, sir.

25 Q. And then it says, "Detectives requested

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1 assistance from uniformed officers to meet with Gomez
2 at his residence." Is that right?

3 A. Yes, sir.

4 Q. And it says that "undersigned was made
5 advised that Gomez was placed into custody for the
6 outstanding tickets at his residence and transported to
7 police headquarters to meet with the detectives"; is
8 that right?

9 A. Yes, sir.

10 Q. So from that can you tell us who drove
11 Gomez back to the police station?

12 A. By reading that not too sure, sir, but I --
13 if I had to bet any money on it, I'm pretty sure it was
14 the uniformed officers that transported him.

15 Q. That makes sense. And having -- and just
16 to show you what is below here it starts at 1710 hours
17 and is about the interview. So it's -- I am going to
18 represent to you that there's not anything down here
19 about what happened before the interview. So my
20 question, I guess, is having looked at your report, do
21 you remember any conversation with Gomez before he was
22 interviewed?

23 A. Again, if I -- if my memory serves me right
24 I know we made contact. I'm pretty sure Detective
25 Sanchez told him what this was all about. Hey, I think

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1 this is what it was said. Hey, I think have you
2 information, referenced Daniel Villegas's case,
3 something to that extent and, again, I need you to go
4 down to the headquarters. Well, obviously, he's in
5 custody so we're going to take you down to headquarters
6 and interview you about a witness statement. That's my
7 thinking how it went down. I -- I personally don't
8 remember speaking to him. Again, maybe just an
9 introduction and just standing there and just nodding
10 my head, yeah, you've got to go down there and give a
11 statement.

12 MR. HILKE: I'm going to stop sharing this
13 now.

14 BY MR. HILKE:

15 Q. Detective, do you have any other memories
16 of Oscar Gomez?

17 MR. DARNELL: One second, Wally, what
18 exhibit was that?

19 MR. HILKE: That was Exhibit 2.

20 MR. DARNELL: Thanks.

21 A. No, sir. Nothing that stands out.

22 BY MR. HILKE:

23 Q. Nothing -- nothing at all vague or
24 specific?

25 A. Wasn't -- according to my notes, it doesn't

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1 -- I think from the time I -- we were at his house to
2 the time we released him to, you know, from office --
3 according to my statement was an hour the whole thing.

4 Q. Thank you. Who was the district attorney
5 working on the Electric Street murders case in 2014?

6 A. According to my notes, it looks like ADA
7 Myers.

8 Q. And before you started working on the case,
9 did you know who ADA Myers was?

10 A. Yes, sir.

11 Q. Had you worked -- had he been involved in
12 other cases you had investigated?

13 A. Yes, sir.

14 Q. How many times would you say?

15 A. Gosh, maybe five times.

16 Q. And had you had conversations with him
17 about those cases?

18 A. Sure.

19 Q. And tell me a little bit about that, what
20 -- how do you -- what do you talk about when you talk
21 with the DA about a case you are working on?

22 A. It depends. It was early in an
23 investigation. What would happen is we would go out,
24 do our investigation, gather evidence, statements and
25 then we would maybe a week into it if there's an arrest

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1 made or whatever, we with all meet together with the
2 ADA's, the crime scene officers, if there's gang
3 officers involved, if it's a gang related case, we'd
4 all sit around a big table and okay, this is what's
5 going on. This is what's going on. We got this, we
6 got that, yeah. We would do that quite a bit.

7 **Q. Did you have a meeting like that in the**
8 **Electric Street murders investigation?**

9 A. No, sir.

10 **Q. And in a meeting like that, what's the DA's**
11 **role? What are they contributing to that meeting?**

12 A. They're just listening to be honest with
13 you. If I can recall some of those meetings, they're
14 just kind of listening, oh that's good, that's good,
15 okay, good, good, good.

16 **Q. And did you meet with Kyle Myers about the**
17 **Electric Street murders?**

18 A. Yeah. When I was asked to go meet with him
19 and take that first statement.

20 **Q. Did you meet with him any other time?**

21 A. Reference this case?

22 **Q. Yes.**

23 A. Yes, sir. According to my notes, I met
24 with him one more time maybe a month into this and he
25 gave us a list of names to do some follow-ups.

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1 **Q. Did -- so take me back to the -- take me**
2 **back to the first meeting. What was -- what did --**
3 **what did ADA Myers tell you at the first meeting you**
4 **had with him?**

5 A. If I recall, again, we were myself and
6 Detective Sanchez said, hey, go down and meet with ADA
7 Myers and, you know, what looking over my notes, I put
8 district attorney I didn't put Myers but I'm assuming
9 it is Myers because I did put him on the second contact
10 so I'm going to say it was ADA Myers. We go down there
11 to his office and it's a conference room and there's
12 Mr. Juarez is there and he's been there and he
13 introduced us says, hey, this is Detective. Do me a
14 favor, can you tell these detectives what you told me
15 and they're going to take a statement from you. And we
16 took a statement.

17 **Q. Did you talk to Myers after you took the**
18 **statement?**

19 A. Sure.

20 **Q. And what did you talk about?**

21 A. The case, how they were going to re -- I
22 kind of knew what was going on because it's on the
23 media. It's on the news. They're going to re -- I
24 think Mr. Villegas had been -- already given out he was
25 let out on a bond. They were going to re -- the DA

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1 wanted to go after him again or re-try the case.
2 That's probably as much as we knew what was going on
3 and the same thing Mr. Myers said, hey, listen we're
4 going to go after him. We need to get some statements,
5 witnesses, some are no longer alive, some are, we need
6 to find them. We need to go -- oh, and I know the
7 defense was trying to point fingers to another suspect
8 that he was responsible for the -- for the some of it.

9 **Q. And so -- so was that part of your**
10 **conversation with Myers that the defense theory that**
11 **another -- another suspect had committed the murders?**

12 A. Yes. That's -- the defense was -- Daniel
13 Villegas's defense team was saying that it was not
14 Villegas, that it was other people involved.

15 **Q. And what did Myers have to say about that?**

16 A. No, that it wasn't true. That they did
17 have the right person, that it was Daniel Villegas,
18 that was the person responsible for the deaths.

19 **Q. And how did -- did he say how he knew?**

20 A. I can't recall to be honest with you. I'm
21 not sure.

22 **Q. And so what were Myers's instructions to**
23 **you about how to investigate the case?**

24 A. Again, investigation, we really didn't do
25 any investigations. All we -- he didn't tell us what

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1 to do. He just gave us a list of names but at that
2 particular -- according to my notes, I think when we
3 left there, we went and looked for Mr. Juarez's ex-wife
4 to get a statement from her. So when we left there
5 after that one, I think that's the only information we
6 had to go look for the -- his wife.

7 **Q. Yeah. And I want to use the right**
8 **language. You're saying it wasn't really an**
9 **investigation. How would you describe it?**

10 A. Just go get a statement from this person
11 that's it. Yeah, go talk to so-and-so and see what
12 they tell you.

13 **Q. Sure. So did you expect those conver --**
14 **did you talk about what you expected to get from the**
15 **witnesses you were trying to take -- strike that.**

16 **Why did Myers want you to look into those**
17 **particular witnesses?**

18 MR. DARNELL: Object to speculation.

19 A. I guess to clear -- okay. To clear that
20 person that was being accused of the -- the one that
21 committed the murders. Yeah, that's right. Because
22 Mr. Juarez was re -- Ms. -- Ms. Flores was the sister
23 of the person they were saying committed the murders.

24 BY MR. HILKE:

25 **Q. Yeah. And so let me ask you, when you said**

<p style="text-align: right;">Page 118</p> <p>1 before that this wasn't -- that you're not -- that of</p> <p>2 investigation is a big word, this wasn't the case where</p> <p>3 you had an open field. This wasn't a who-done-it at</p> <p>4 the point you got it, was it?</p> <p>5 A. Correct. Yes, sir.</p> <p>6 Q. Okay. And by the time this case came to</p> <p>7 you, there had been, you know, were you aware of the</p> <p>8 legal proceedings that had come before your</p> <p>9 investigation?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And did you look at any documents</p> <p>12 from those legal proceedings?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. Were you given any of the exhibits</p> <p>15 that Daniel's defense team presented in any of those</p> <p>16 proceedings?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. What documents were you referencing</p> <p>19 as you conducted those follow up interviews?</p> <p>20 A. Gosh. I can't recall to be honest with</p> <p>21 you. I think it was pretty much, hey, do you remember</p> <p>22 this back in 1993? Yeah. What happened, where were</p> <p>23 you, what did you do, and that's pretty much it, yeah.</p> <p>24 Q. So you weren't doing a deep dive into the</p> <p>25 old file and all the old documents on the case?</p>	<p style="text-align: right;">Page 120</p> <p>1 Oscar Gomez your last involvement with the case?</p> <p>2 A. Oh, yes, sir, mm-hmm.</p> <p>3 Q. I want to ask you about another document</p> <p>4 now.</p> <p>5 MR. DARNELL: Wally.</p> <p>6 MR. HILKE: Go ahead.</p> <p>7 MR. DARNELL: Lunch?</p> <p>8 MR. HILKE: Yeah, should we break for</p> <p>9 lunch?</p> <p>10 MR. DARNELL: We've been going about an</p> <p>11 hour and 15 minutes since our last break, so it would</p> <p>12 probably be a good time.</p> <p>13 MR. HILKE: Yeah, I think we're just under</p> <p>14 an hour but I'm good for lunch.</p> <p>15 MR. DARNELL: Perfect.</p> <p>16 MR. HILKE: Is half an hour all right to</p> <p>17 return at 1 o'clock Mountain Time?</p> <p>18 MR. DARNELL: Works for me.</p> <p>19 ONLINE VIDEO TECH: All right. We are off</p> <p>20 the record. The time is 12:31.</p> <p>21 (Break from 12:31 p.m. until 1:05 p.m.)</p> <p>22 ONLINE VIDEO TECH: We're back on the</p> <p>23 record for the deposition of Detective Hector Loya</p> <p>24 being conducted by videoconference. My name is Sydney</p> <p>25 Little. Today is May 9, 2022, and the time is 1:06.</p>
<p style="text-align: right;">Page 119</p> <p>1 A. No, sir.</p> <p>2 Q. And in those interviews in that follow-up,</p> <p>3 were you trying to do anything other than follow up</p> <p>4 with the witnesses that Myers had indicated you should</p> <p>5 follow up with?</p> <p>6 A. No, sir, nothing.</p> <p>7 Q. All right. So do I have it right that the</p> <p>8 last time you met with Myers was around March of 2014?</p> <p>9 A. According to my notes, yes, sir. The</p> <p>10 second time we went, met with him.</p> <p>11 Q. And do you remember interacting, talking,</p> <p>12 interacting with Myers on this case after you helped</p> <p>13 with the interview of Oscar Gomez?</p> <p>14 A. Oh, no, sir, no. I -- I don't believe</p> <p>15 Mr. Myers is there no longer. I think he had left the</p> <p>16 DA's office, yeah.</p> <p>17 Q. And do you know who was the next DA to work</p> <p>18 on the case?</p> <p>19 A. I know James Montoya ADA. I know he</p> <p>20 actually, I think he's the one that went to court with</p> <p>21 it, yeah.</p> <p>22 Q. Did you ever talk to James Montoyai about</p> <p>23 the case?</p> <p>24 A. Never, sir.</p> <p>25 Q. Was the interview in December 2014 with</p>	<p style="text-align: right;">Page 121</p> <p>1 BY MR. HILKE:</p> <p>2 Q. Detective, did you take any notes, any</p> <p>3 handwritten notes in the Electric Street -- in your</p> <p>4 Electric Street murder interviews?</p> <p>5 A. I don't recall.</p> <p>6 Q. I am going to show you a document now.</p> <p>7 Let's see. Oops. Detective, do you see a hand -- a</p> <p>8 document that is handwritten notes in front of you?</p> <p>9 A. Yes, sir, I do.</p> <p>10 Q. Okay. And for the record, this is</p> <p>11 Exhibit 6, 2014 handwritten case notes.</p> <p>12 Detective, are these your notes?</p> <p>13 A. No, sir, they're not.</p> <p>14 Q. Do you recognize this handwriting?</p> <p>15 A. I believe, you know what I do recognize is</p> <p>16 that notebook, that type of notebook I know Detective</p> <p>17 Armendariz used to like to use those notebooks.</p> <p>18 Q. Okay. And so I'm currently on Page 1 of</p> <p>19 this document. I am going to scroll down a little to</p> <p>20 Page 11, is this your handwriting, Detective?</p> <p>21 A. I don't believe it is, sir. No, sir.</p> <p>22 Q. I am just going to show you one more page</p> <p>23 of this. This is at Page 15. Is this your</p> <p>24 handwriting, Detective?</p> <p>25 A. No, sir, it's not.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q. Okay. I'm going to stop sharing that for a</p> <p>2 minute now.</p> <p>3 Detective, do you remember interviewing</p> <p>4 Jose Alfredo Juarez in this case?</p> <p>5 A. Yes, sir, I do.</p> <p>6 Q. Okay. And who was Jose Juarez?</p> <p>7 A. From reading that statement, he -- I -- he</p> <p>8 just -- he was the brother-in-law of Rudy Flores.</p> <p>9 Q. Do you remember why he was important in</p> <p>10 this case?</p> <p>11 A. I'm not sure, so no, I don't.</p> <p>12 Q. And do you remember interviewing him?</p> <p>13 A. Yes, sir, I do.</p> <p>14 Q. Was there another detective with you?</p> <p>15 A. Yes.</p> <p>16 Q. Who was that?</p> <p>17 A. Detective Armendariz.</p> <p>18 Q. Okay. And who led the questioning of Jose</p> <p>19 Juarez?</p> <p>20 A. I can't recall, sir. Probably both of us</p> <p>21 after we had just met with the ADA, told us what was</p> <p>22 going on or, yeah, this is what you guys need to ask.</p> <p>23 Again, he had already been interviewed by ADA Myers so</p> <p>24 it was one of those like, okay, whatever you told me</p> <p>25 tell the detective.</p>	<p style="text-align: right;">Page 124</p> <p>1 statement? Do you need me to zoom in at all for you?</p> <p>2 A. No, sir. I can see it.</p> <p>3 Q. Just let me know when you need me to scroll</p> <p>4 down.</p> <p>5 A. Thank you.</p> <p>6 Q. And I'm sorry, this is Exhibit 2 again and</p> <p>7 PDF Page 1. I don't know if I said that before.</p> <p>8 A. Okay. You can scroll down, please.</p> <p>9 Q. Okay.</p> <p>10 A. Okay, sir.</p> <p>11 Q. Okay. So Jose said he didn't think that --</p> <p>12 so sorry. Strike that.</p> <p>13 Do you know who Rudy Flores is?</p> <p>14 A. I've never met him. No, sir. I don't know</p> <p>15 who he is.</p> <p>16 Q. Do you know that he is, he is the -- so I</p> <p>17 know you may not know him personally. Are you aware</p> <p>18 that Rudy Flores is a person who Daniel Villegas's</p> <p>19 defense team said was the real killer?</p> <p>20 A. Yes, that's what we heard.</p> <p>21 Q. And he is the one who -- who district</p> <p>22 attorney Myers had told to -- we need to, you know, go</p> <p>23 find, like, who told you to look -- who to interview</p> <p>24 people who can show that Rudy wasn't actually the</p> <p>25 killer; is that right?</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Okay. So it -- and did you show any</p> <p>2 materials to Jose before you questioned him?</p> <p>3 A. I don't recall, sir. I don't think so.</p> <p>4 Q. And if you had shown him any documents,</p> <p>5 that would be in your notes, right?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And I am going to take a minute and show</p> <p>8 you the -- show you your statement regarding</p> <p>9 Mr. Juarez. Or your notes I should say. One moment,</p> <p>10 please. Okay. Do you see that document in front of</p> <p>11 you?</p> <p>12 A. Yes, sir, I do.</p> <p>13 Q. And is this your investigative supplement</p> <p>14 again?</p> <p>15 A. Yes.</p> <p>16 Q. And so I am scrolling down. Do you see on</p> <p>17 January 27, it says January 27, 2014?</p> <p>18 A. Yes.</p> <p>19 Q. And you and Detective Armendariz met at the</p> <p>20 district attorney's office and subsequently met with</p> <p>21 Jose Alfredo Juarez?</p> <p>22 A. Yes.</p> <p>23 Q. And I am going to ask you to -- let's see.</p> <p>24 Let's take a quick look at this. Can I ask you to</p> <p>25 please go ahead and take a minute to read the</p>	<p style="text-align: right;">Page 125</p> <p>1 A. That's correct. Yes, sir.</p> <p>2 Q. Okay. So Jose said he didn't think Rudy</p> <p>3 committed the Electric Street murders; is that right?</p> <p>4 A. According to this statement, yes, sir.</p> <p>5 Q. Okay. And did you ever ask Jose how he</p> <p>6 knew that?</p> <p>7 A. I can't recall ever asking him that</p> <p>8 question.</p> <p>9 Q. Okay. And is there a -- as you reviewed</p> <p>10 this statement, is there anything in his statement</p> <p>11 about how -- how he knows that Rudy wasn't the killer?</p> <p>12 A. Reading the statement, no, sir.</p> <p>13 Q. And Jose said in the statement also that he</p> <p>14 was questioned a few days after the shooting, right?</p> <p>15 A. Yes.</p> <p>16 Q. And he said he was scared when he was</p> <p>17 questioned, right?</p> <p>18 A. Correct.</p> <p>19 Q. Did you ever ask him why he was scared?</p> <p>20 A. I don't recall asking him that question.</p> <p>21 Q. Okay. And he said he doesn't remember</p> <p>22 where he was the night of the shooting, right?</p> <p>23 A. Correct.</p> <p>24 Q. And -- but he does say he knows what he</p> <p>25 said matched with what Rudy told the officers, right?</p>

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1 A. I did see that. Yes, sir.
 2 Q. Did you ever ask Jose how he knew -- how he
 3 knew that what he told the officers was the same as
 4 what Rudy told the officers?
 5 A. I don't recall if I ever did ask him that
 6 or if the other detective.
 7 Q. Does anything about that appear in the
 8 statement that you took from him?
 9 A. No, sir, it doesn't.
 10 Q. Okay. And is that the kind of
 11 corroborating detail that would have been important to
 12 ask about?
 13 A. Yes, sir.
 14 Q. Okay. And if he had answered that
 15 question, would you have put what he said in your
 16 statement?
 17 A. Yes, I would.
 18 Q. And how did this interview affect -- I'm
 19 sorry. Strike that.
 20 How did this interview -- did this
 21 interview affect the subseq -- the next interviews you
 22 took working on the Electric Street murders?
 23 A. I don't think it did. No, sir.
 24 Q. So it didn't change what information you
 25 were looking into?

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1 A. No, sir. I -- told us to go out and speak
 2 to his ex-baby mama.
 3 Q. Okay. And were you aware that Jose thought
 4 that the detective, that in 1993 the detectives
 5 involved in the investigation were accusing him of
 6 committing the murder?
 7 A. I'm sorry. Can you repeat the question?
 8 Q. I can. Were you aware that back in 1993,
 9 Jose spoke to detectives and Jose thought those
 10 detectives were accusing him of committing the murder?
 11 A. Because he said that on the statement or --
 12 or I knew that prior knowledge or --
 13 Q. I -- were you aware of that? I don't
 14 believe it's in the statement.
 15 A. No, sir. I -- yeah, no, sir, I never heard
 16 of that.
 17 Q. And was that -- was that the kind of detail
 18 that you looked into while you were doing these
 19 interviews?
 20 A. No, sir.
 21 Q. And Jose's statement wasn't recorded, was
 22 it?
 23 A. No, sir. It was just typed, not recorded.
 24 Q. And are there -- are there reasons why you
 25 would choose to have a statement recorded versus typed?

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1 A. From my understanding was that witness
 2 statements needed to be typed and then any type of
 3 interrogation or suspect statements were recorded. I
 4 think because it was a cost thing to get everything
 5 transcribed by the DA's office. They said we couldn't
 6 do it but they prefer us to type out witness
 7 statements.
 8 Q. And so are you typing this statement while
 9 you were taking the state -- are you the one who typed
 10 this statement?
 11 A. It looks like I was the one that typed the
 12 statement, yes, sir. I don't recall. It was either me
 13 or Detective Armendariz.
 14 Q. And where physically were the two of you
 15 while the statement was typed?
 16 A. I recall that it was like a small
 17 conference room and that's where I was -- as a matter
 18 of fact, they had a big old monitor, 32-inch monitor
 19 and that was the screen that I was typing on and I had
 20 a keyboard there. I do recall that.
 21 Q. And so was that a laptop or a computer at
 22 the DA's office?
 23 A. It was a computer in the DA's office.
 24 Q. Okay. So they -- so from the DA's
 25 office -- and so how did you access the -- when this

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1 was typed, was it typed in the case management system
 2 used at the police department?
 3 A. I believe -- I believe it was. I know that
 4 the DA's had -- have access to the same system that we
 5 have. They're able to -- I'm pretty sure I logged in
 6 under my case number, under my ID number and typed the
 7 statement out.
 8 Q. Got it. So when you are working at Crimes
 9 Against Persons, was there -- strike that.
 10 When you were at Crimes Against Persons,
 11 how were your investigations supervised?
 12 A. I had a -- we had direct supervisors. I
 13 guess when cases come in, our direct supervisor would
 14 assign us a case. I'd read on it. I'd open the case,
 15 find out what's going on, I would do self initiative
 16 investigation. I guess once I'm done, they would
 17 approve my case. Once I approve it, then it goes to
 18 them they verify everything and then they approve it.
 19 Q. And what do they verify when they -- after
 20 you send it to them?
 21 A. Good question. I guess to make sure
 22 everything's there the way it should be, I didn't miss
 23 anything.
 24 Q. Did you ever --
 25 A. The --

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1 Q. I'm sorry. Did you ever get a case sent
2 back to you after you submitted it for verification?
3 A. I'm pretty sure I did. I mean, but nothing
4 major. Maybe a -- gosh, I -- hey, you need to fix
5 this. It doesn't look right or you forgot to put this
6 in there or, yeah, maybe stuff like that.
7 Q. And did you -- I'm sorry. I'm going to
8 stop sharing this here. Did you have multiple
9 supervisors when you were at Crimes Against Persons?
10 A. We had our -- we had one lieutenant and we
11 had three sergeants and I had one sergeant assigned to
12 me but they pretty much all gave us direction.
13 Q. Which sergeant was assigned to you?
14 A. I believe my direct sergeant was Karen
15 Kozak.
16 Q. Kozak. Could you say that first name
17 again?
18 A. Karen.
19 Q. Okay.
20 A. Kozak.
21 Q. Do you know how you spell that last name?
22 A. K-O-Z-A-K.
23 Q. And did -- and so did you always submit --
24 when you submitted your case file for verification, was
25 it always Sergeant Kozak who reviewed it?

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1 A. Yeah. Because she was my direct sergeant.
2 I guess, there's a pool of detectives that are under
3 her so -- but we would have said something after we
4 were done, it would I guess go to her mailbox or
5 however it worked out. And now if she's not there
6 she's on vacation, then I would get with another
7 sergeant, hey, can you approve this, something to that
8 effect.
9 Q. Gotcha. Would -- did she verify your
10 supplement in the Electric Street murders?
11 A. I'm not too sure but, yeah, she was there
12 so I would assume she did, yes.
13 Q. And did you -- other than her assigning you
14 work and verifying cases at the end of an invest --
15 of -- of your work on them, did she supervise you in
16 any other way?
17 A. Sure. During a major case or something
18 like that after we were working it, we had different
19 leads, this and that, then she would say, okay, Hector,
20 do me a favor. Go -- you're in charge of canvassing,
21 go canvas. Okay. Hector, you are in charge of the
22 autopsy, we'll do the autopsy. So, yeah, she would
23 give us direction, who was in charge of it.
24 Q. And did she, other than when verifying it,
25 did she review your case files at any other time?

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1 A. On this particular case?
2 Q. On any case.
3 A. Oh, yes, definitely, yes.
4 Q. And what did that -- what -- how did she do
5 that?
6 A. I guess she would review it, make sure
7 everything was there and everything's okay and then she
8 would approve it.
9 Q. How often would she do that?
10 A. I guess daily.
11 Q. Always -- always peaking in files?
12 A. Not necessarily peaking at files but, yeah,
13 I guess once I'm done with a case whether it was daily
14 or weekly or monthly then she would approve it.
15 Q. I'm sorry. But my question was other than
16 at the end of a case, did she look at your case files
17 at any other time?
18 A. Not to my knowledge.
19 Q. Okay. And did Sergeant Kozak expect you to
20 follow your training as a police officer?
21 A. I'm pretty sure she did, yes.
22 Q. And did she expect you to follow the
23 policies and procedures of the police department?
24 A. Yes.
25 Q. And so at Crimes Against Persons, did it --

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1 so at Crimes Against Persons, was it more important to
2 close cases -- I'm sorry. Strike that.
3 At Crimes Against Persons, was it
4 considered better to let a guilty person go free than
5 to cause the conviction of somebody innocent?
6 MR. DARNELL: Object to form.
7 MR. HILKE: I'm sorry to interrupt you.
8 Jeep, I think you need to speak up a little. I heard
9 an objection but I didn't hear what it was.
10 MR. DARNELL: Object to the form of the
11 question. Calls for speculation and vague.
12 BY MR. HILKE:
13 Q. You can answer.
14 A. Okay. Can you repeat the question? I'm
15 sorry.
16 Q. Yes, sir. At Crimes Against Persons, was
17 it better to let a guilty person go free than cause the
18 conviction of someone innocent?
19 MR. DARNELL: Same objection.
20 A. As I understand the question correctly,
21 you're saying it's better to let go, even if we let a
22 bad guy go as long as we get a -- we close a case? Is
23 that what you're saying?
24 BY MR. HILKE:
25 Q. No, sir. I'm saying that are you more --

<p style="text-align: right;">Page 134</p> <p>1 I'm saying is it -- I'm saying the two things: You can 2 make a mistake and let an innocent person go free -- 3 wait. Strike that. 4 You can make a mistake and let a guilty 5 person go free; you can make a mistake and convict 6 someone innocent. Is it better to let someone guilty 7 go free than to convict someone innocent at Crimes 8 Against Persons? 9 MR. DARNELL: Same objection. 10 A. I guess anywhere, yeah, that's a true 11 statement, yeah, whether CAP or anywhere else, yes. 12 BY MR. HILKE: 13 Q. Okay. And did your supervisors ever 14 address that issue the issue of making sure that 15 innocent people are not convicted? 16 A. Was it ever brought up? 17 Q. Yes, sir. 18 A. I don't remember. I don't recall ever 19 seeing that brought up. Again, that's just common 20 sense. 21 Q. Was there anything your supervisors 22 encouraged you to do to make sure that innocent people 23 would not get convicted? 24 A. Not to my knowledge, no, sir. 25 Q. And at Crimes Against Persons -- I think I</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. And did prosecutors also give you 2 instructions after the criminal case had been filed? 3 A. After a case? Did it happen? Probably. 4 But not often. Yeah. 5 Q. Okay. So at the Electric Street murders 6 work that you did, was that an unusual situation? 7 A. Yes, sir. 8 Q. Okay. And do you recall any other specific 9 cases where you were asked to investigate after charges 10 had been filed? 11 A. No, sir. 12 MR. HILKE: We're getting some feedback and 13 Jim, I'm seeing -- I don't know if it's your phone 14 there but it might be. Thank you. 15 BY MR. HILKE: 16 Q. Do you -- and do prosecutors participate in 17 the investigations of all crimes -- strike that. 18 Are prosecutors always involved in your 19 investigations before charges have been filed? 20 A. No, just major cases. 21 Q. Okay. And when a prosecutor is involved, 22 does it change how you investigate a case? 23 A. No, sir. 24 Q. Okay. Do you have different expectations 25 on your investigation?</p>
<p style="text-align: right;">Page 135</p> <p>1 already asked you that. 2 So before you mentioned that you would work 3 with prosecutors before a case is filed and sometimes 4 after a case is filed; is that right? 5 A. Correct, yes, sir. 6 Q. Did prosecutors ever give you directions 7 before a case was filed? 8 A. Yes. 9 Q. What kinds of directions? 10 A. Maybe to clarify maybe a witness statement, 11 go back and hey, did you guys ever -- hey, I know you 12 mentioned this here, did you ever follow up on that? 13 Like, oh, shit. I forgot and then we'd go back and 14 follow up on that. 15 Q. And did the prosecutors expect that you 16 would follow in their instructions during an 17 investigation? 18 A. Yes, sir. 19 Q. Where did prosecutors sit in the chain of 20 command? 21 A. They didn't sit anywhere on the chain of 22 command. A lot of times it was just their legal 23 opinion, their knowledge how far I could take 24 something, maybe language on a search warrant, what I'm 25 looking for, stuff like that.</p>	<p style="text-align: right;">Page 137</p> <p>1 A. No, sir. 2 Q. Or different priorities? 3 A. No. 4 Q. And do you still follow your training in 5 the same way you would if a prosecutor had not been 6 involved? 7 A. Yes, sir. 8 Q. You mentioned sergeants and a lieutenant at 9 Crimes Against Persons. Is there anyone else in the 10 chain of command within Crimes Against Persons? 11 A. Our Commander Pelletier who oversaw a bunch 12 of units including CAP. 13 Q. Okay. And who is above the commander? 14 A. It would be commander would be an assistant 15 chief. 16 Q. And then is it the chief? 17 A. Then it would be the chief, yes, sir. 18 Q. Who is above the chief? 19 A. Who is above the chief? 20 Q. Yes, sir. 21 A. I guess the city manager, the mayors. 22 Q. So is it typical when investigating a 23 murder to look for the weapon? 24 A. Yes. 25 Q. And when you worked on the Electric Street</p>

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1 murders, did any evidence come up about a murder
 2 weapon?
 3 A. No, sir.
 4 Q. And did you ever learn about anyone who had
 5 information about a weapon linked to the shooting?
 6 A. I don't think so. No, sir.
 7 Q. Or anyone who had information regarding a
 8 weapon linked to Rudy Flores?
 9 A. No, sir, I don't recall.
 10 Q. Okay. And if you had come across such
 11 information, would you have written it down?
 12 A. Yes, sir.
 13 Q. Okay. Do you remember talking to Jesse
 14 Rodriguez about the Electric Street murders?
 15 A. I never spoke to Jesse Rodriguez, no.
 16 Q. You never spoke to Jesse Rodriguez?
 17 A. I have spoken to him but not about this --
 18 this case.
 19 Q. Okay. So Daniel Villegas was never a
 20 discussion between you and Jesse Rodriguez?
 21 A. I don't think I've ever -- I mean, I can
 22 say I spoke to him. To be honest with you, I don't
 23 think I spoken to him since before he left the
 24 department and obviously, that was way before this but
 25 it just doesn't sound like I would do something like

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1 that, talk to him about that, yeah.
 2 Q. When did you first meet Jesse?
 3 A. Actually, when I first started at the
 4 department seven years ago.
 5 Q. And when did you first encounter him?
 6 A. We worked central patrol together, he
 7 graduated I think two years ahead of me.
 8 Q. Okay.
 9 A. When I was a rookie, he was on two years
 10 already.
 11 Q. And did you ever patrol together with him?
 12 A. Sure, we did. We were on the same shift,
 13 like, work together full crew, never.
 14 Q. Okay. But you -- you're on the same shift
 15 so you'd see him every day when you went --
 16 A. Yeah. And he'd assist me on some of my
 17 calls and I'd assist him on some of his sometime.
 18 Q. Okay. And did you ever spend time with him
 19 outside of work?
 20 A. No.
 21 Q. No. So you never went out for a drink with
 22 him?
 23 A. I -- you know what, as -- social, no, never
 24 -- never that I could recall that I -- maybe there was
 25 a what we call shift party after, maybe he was there

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1 but not where we both agreed to go out together but
 2 yeah, is he at a bar and a bunch of us are there and he
 3 shows up there, yeah, maybe.
 4 Q. So did he like did you ever meet any
 5 members of his family?
 6 A. No.
 7 Q. And did he ever meet any members of your
 8 family?
 9 A. You know what, I do recall he was still on
 10 the department. I remember I was at the Academy Sports
 11 Store and I bumped into him there off duty and he was
 12 with his kids, his wife, and that was the first time
 13 and last time I've ever met his family. That was with
 14 my wife and my son.
 15 Q. And Jesse left the force at some point,
 16 right?
 17 A. Yes, sir.
 18 Q. Do you know why he left the force?
 19 A. He was terminated.
 20 Q. He was terminated. Why was he terminated?
 21 A. Back then I used to be a director for our
 22 police association and when unfortunately, when
 23 officers got in trouble they went through Internal
 24 Affairs, they'd ask for us to go with them since
 25 they're represented at Central. It would come out with

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1 the rep for the region. He asked me, hey, can you go
 2 with me because I'm being accused and this and that, so
 3 I really don't want to know. I'll go with you and I
 4 guess I'll find out, anyway, long story short I know he
 5 did something he wasn't supposed to do and they
 6 subsequently terminated him.
 7 Q. Do you know what he did?
 8 A. I don't know the exact words but am I
 9 allowed to give that you information? It was -- I
 10 mean, he was being accused of I think dealing with
 11 cartels, family, selling, selling information.
 12 Q. All right. When you started working on the
 13 Electric Street shootings, did you know of any
 14 connection between Jesse and Daniel Rodríguez?
 15 A. Yes, I did.
 16 Q. What connection did you know of?
 17 A. When I took a statement from Ms. Fierro and
 18 a Mr. Cuellar from Colorado, I actually took a
 19 statement Ms. Fierro was actually, I think, a direct
 20 witness back in 1993 and they were in town. This was I
 21 think March 2014 and my partner Detective Armendariz
 22 took a statement from Ms. Fierro and her husband wanted
 23 to give me a statement. Sure, okay, what do you want
 24 to give me a statement. Were you there? He goes, no,
 25 I didn't even know my wife back then but he said, yeah,

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1 the defense keeps sending people harassing us. Look, I
2 even have a recording of some guy trying to get ahold
3 of us that he was going to compensate us and he said,
4 hey, I have the audio. Do you want to hear it? I go,
5 sure. Play it. So he plays it on his phone and Jesse
6 Rodriguez has a distinctive voice. I'd know his voice
7 anywhere. And I sure enough, I knew it was him and I
8 even get Detective Armendariz, hey, come here and
9 listen to this. He listens to it and after we're done,
10 I don't tell the people that -- who -- I know who it
11 is. I say, you know who that is? He said, no. That's
12 Jesse Rodriguez. He goes, that's right. It is him.
13 That was the only thing that I remember ever talking
14 to.

15 **Q. Got it. So the only connection you knew of**
16 **was that you heard a recording and all of a sudden you**
17 **realized, hey, that's Jesse Rodriguez?**

18 **A. Yeah. That I guess a defense attorney had**
19 **hired him to do, I guess, some type of investigation.**

20 **Q. And you were telling me before you that**
21 **listened to an audio file to get ready for this**
22 **deposition. Is that right?**

23 **A. Yes, sir, I did.**

24 **Q. And Jesse Rodriguez was on that file; is**
25 **that right?**

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1 **A. Yes, mm-hmm.**

2 **Q. And did you hear more than one person**
3 **speaking on that file?**

4 **A. Mm-hmm.**

5 **Q. Okay. And does Jesse say that you are the**
6 **person he is talking to on the file?**

7 **A. Because I'm -- when they're playing it**
8 **there's a transcriber and I can't recall if he says my**
9 **name but I know on the transcription it says, Mr. Loya**
10 **or Hector Loya and then it says, Jesse, so that's when**
11 **they when they say it's me, yeah, it doesn't sound like**
12 **me.**

13 **Q. Okay. Your testimony is that you are not**
14 **the person speaking on that file?**

15 **A. That's not me, no. He even refers to me**
16 **about his wife, about a birthday party. I've never**
17 **been to a birthday party. I mean, I met his wife years**
18 **ago but I didn't know him as friends though. I guess**
19 **the guy that is supposed to be me is asking about**
20 **Brenda and I wouldn't even know that information.**

21 **Q. Okay. I am going to play for you -- this**
22 **is Exhibit 8. Okay. This is Exhibit 8 and I'm playing**
23 **from the beginning.**

24 (Audio recording playing.)

25 **AUDIO: July 1st about 1:40 p.m. going to**

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1 meet with Detective Loya Daniel Villegas case ...
2 conversation ... what's up? What's up gringo? What's
3 going on brother? How you doing? Good. How's your
4 wife? Good, good. You know this whole thing with me
5 has been tough on her. ... party we couldn't talk man
6 all the guys there were and it was a little awkward,
7 you know. Did he tell you anything afterwards? No, I
8 just -- just that's the way I...

9 **MR. HILKE: Pardon me. I skipped ahead and**
10 **I didn't mean to. I'm going to playback at the 21**
11 **second mark for a few seconds here.**

12 (Audio recording continued)

13 **AUDIO: What's up, what's up, gringo?**
14 **What's going on brother? How you doing? Good. How's**
15 **your wife? Good man, good, good. How's Brenda?**
16 **(Inaudible) you know this whole thing with me has been**
17 **tough on her for awhile. April, (inaudible) birthday**
18 **party, you couldn't talk man. All the guys were there**
19 **and it was a little awkward, you know. Did he tell you**
20 **anything afterwards? No, just -- just I can tell by**
21 **the looks, man. Yeah. You know what, man, I found it**
22 **kind of weird that you guys invited us. But, you know,**
23 **come on, let's just go. And now (undecipherable) now,**
24 **i feel they're staring and i feel them, looking, you**
25 **know, and I just -- the reason I'm kind of just wanted**

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1 to go away, just the conversation we had the last time
2 about the case. Villegas case. Oh, yeah. You know,
3 hey bro, why are you so interested in that case man?
4 You know, I am interested because it's an innocent
5 person being charged with -- with the crime he didn't
6 commit and you both -- we both -- he didn't do it. And
7 just what you told me the last about -- how you guys
8 are being told to work. We both know he didn't do it.
9 The goal is -- and going out there getting all these
10 facts and, you know, the DA is the one that's running
11 the show man. You know, we -- big time. We get all
12 the information and he just picks and chooses what --
13 what he wants. Really. Yeah, so you'll go out meet
14 with witnesses and then what? Bring it back and
15 then -- you guys are told what to put in? Yeah, bro.
16 Yeah. We just do the book work. You know, we're the
17 guys at the bottom of the totem pole, man. You and
18 Armendariz? Yeah, yeah. Long days and deal with it.
19 It just the DA, man, he's running this. He's running
20 it, Roy. Telling you, Roy, (undecipherable) have big
21 time bro.

22 **MR. HILKE: Okay. I stopped playing at the**
23 **2 minute 40 second mark.**

24 **BY MR. HILKE:**

25 **Q. So that's not you in that conversation?**

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1 A. No, sir. It's not me.
 2 **Q. Do you have any idea who it is?**
 3 A. I can't say either, sir. I -- it's hard.
 4 I -- it's definitely not me. Again, I never went -- I
 5 haven't associated with him since he left. I tell
 6 people because people ask me, hey, what's -- hey,
 7 what's going on with Jesse? Well, they and I usually
 8 tell them, dude, just stay away from him. He's bad
 9 news. Do not get near him. I don't think I told
 10 anybody this whole how he's involved with the Daniel
 11 Villegas case. Only Detective Armendariz but I said
 12 he's bad news. You need to stay away from him. He's
 13 going to get you into trouble. I know he got a lot of
 14 people in trouble, too. He dragged them into this
 15 whole thing when he got terminated.
 16 **Q. Well, let me ask you about that. What do**
 17 **you mean he dragged people into it when he got**
 18 **terminated?**
 19 A. I remember same incident there was another
 20 officer. He also got dragged into Internal Affairs. I
 21 went him just to support him and I get to sit in when
 22 they're being questioned and sure enough, yeah, during
 23 Jesse Rodriguez, the stuff that he was doing. He was
 24 actually riding with this other officer and he would
 25 tell them, hey, this guy's going to drive by. Let's do

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1 a traffic stop on him as a joke. I know him. Well, he
 2 didn't know him. He was just trying to get intel for
 3 his brother-in-law who was into the cartel. He was
 4 trying to get information. I remember Jesse on the
 5 department if you had a good bust, dope or whatever he
 6 was all into dope, he would ask you the next day. Hey,
 7 i heard you got a good bust. Hey, give me some intel.
 8 I know he was printing out reports, selling them to his
 9 brother-in-law. I was like a movie. I mean, it was
 10 crazy the stuff i was listening to.
 11 **Q. Yeah. And I -- so specifically, you went**
 12 **with another officer who was accused of conduct related**
 13 **to Jesse?**
 14 A. Yes.
 15 **Q. And you don't know if that other officer**
 16 **actually committed any wrongdoing or not?**
 17 A. I -- he didn't get in trouble because he
 18 told the truth. He said, yeah, I remember being there.
 19 I remember we stopped this guy and I didn't make
 20 contact with him. Jesse told me to stop him. Jesse
 21 went and spoke to the guy. He came back out and then
 22 we would always drive by certain areas because he
 23 always wanted a -- very suspicious but, yeah, that
 24 officer's still on this department and nothing happened
 25 to him and I know there was another officer, he got

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1 fired. He was Jesse's -- they were cousins and he
 2 ended up getting a horse. Again, like, a racing horse
 3 from this cartel guy. It was just -- it's like a
 4 movie. It was crazy. He's just bad news and then you
 5 listen to that video, audio. It looks like they're
 6 planting it. Like they are standing right next to each
 7 other, it just sounds a little weird.
 8 **Q. So the other officer who got in trouble**
 9 **connected to Jesse got a racehorse from the cartel?**
 10 A. Yeah.
 11 **Q. I don't ask you other than yeah, I don't**
 12 **want to go into more detail --**
 13 A. Sure, okay.
 14 **Q. -- on that. Are there other officers who**
 15 **Jesse got in trouble?**
 16 A. That I recall -- that I recall I cannot
 17 remember but, yeah, those are the ones that stood out.
 18 **Q. And why would you -- after Jesse was**
 19 **terminated, why would you have to warn other officers**
 20 **about engaging with Jesse?**
 21 A. Because everybody he has -- everybody that
 22 was associated with him got it -- he got in -- he would
 23 get into trouble. And again, I -- I don't remember. I
 24 don't recall incidents why we would talk about him
 25 maybe, hey, remember Jesse? Yeah. Hey, whatever

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1 happened to that guy? And I was like, hey, never
 2 shared this story with him or what happened at Internal
 3 Affairs, other than dude just stay away from him, dude.
 4 If you ever see him out and about, and he asks you
 5 questions, you need to stay from him. He is bad news.
 6 He is really bad. I know the FBI got dragged into it.
 7 It was a whole -- it was like a movie.
 8 **Q. Okay. And what else -- and is that when**
 9 **you warned people about Jesse, is that based on what**
 10 **you know about how he got terminated?**
 11 A. Yes.
 12 **Q. And is it based on anything after he got**
 13 **terminated?**
 14 A. No, sir. Just what he did on this
 15 department, mm-hmm.
 16 **Q. Did you ever talk to him at all since he**
 17 **got terminated?**
 18 A. I could say for a fact I didn't but if I
 19 saw him maybe somewhere down the street, I waived at
 20 him or something like that, but I know it's been years
 21 and I know for a fact I haven't spoken to him. I'll
 22 stay away from him. Rumor had it that he even left
 23 town, that he was no longer living in El Paso until I
 24 heard that audio.
 25 **Q. Okay. Let me ask you, do you remember**

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1 interviewing Manuela Acosta?

2 A. Manuela Acosta, yes, sir.

3 Q. And Armendariz interviewed Beatrice Fierro
4 at the same time, didn't he?

5 A. Correct. Yes, sir.

6 Q. And did you participate at all in
7 Beatrice's interview?

8 A. No, sir.

9 Q. Okay. Did you do both interviews at the
10 same time?

11 A. No. While he's doing Ms. Flores, I'm doing
12 the mom, Acosta.

13 Q. Okay. So at the same time, he's
14 interviewing, Beatrice, you're interviewing Manuela?

15 A. Correct. Yes, sir.

16 Q. Okay. And whose interview ended first?

17 A. Good question. I'm not sure to be honest
18 with you.

19 Q. What did you do after your interview ended?

20 A. If I finished first, I probably escorted
21 Ms. Acosta back to the sitting area, told her thank you
22 for coming down here, appreciate it. Your daughter
23 will be done soon and when she's done, she'll -- you
24 guys are -- we'll walk you out the front door. That
25 was normally what we did.

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1 Q. Do you remember whether you did that in
2 this case?

3 A. Not exactly but something normally we would
4 do, yes. I can't remember if I finished first or
5 Detective Armendariz finished to be honest with you.

6 Q. Do you remember why you were interviewing
7 them?

8 A. Again, because she used to date Mr. Juarez
9 and well, she's the daughter of the person they were
10 accusing that actually committed the -- the shootings.
11 She was Rudy's sister.

12 Q. Okay. And Manuela was Beatrice's mother,
13 right?

14 A. Yes.

15 Q. And did you ask Manuela to give a
16 statement?

17 A. I can't recall if I asked her or somebody
18 suggested, hey, why don't you get a statement from her
19 or maybe we were having a conversation where because I
20 read the statement, like, hey, I remember twenty years
21 ago, I brought my daughter and too, and I was like
22 well, let's get a statement from you, too. I know she
23 wasn't a direct witness. I knew that for a fact, yeah.

24 Q. And did you talk with Armendariz before you
25 conducted the interview?

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1 A. I'm pretty sure I did, yes.

2 Q. What did you discuss?

3 A. I can't recall. Obviously, what we're
4 going to -- what questions we're going to ask, what
5 we're going to try to get from the statements. I'm
6 pretty sure we did. I know we did. I just can't
7 recall exactly.

8 Q. What were you trying to get from the
9 statements?

10 A. I can't recall. I guess if they could -- I
11 guess, Betty could give a maybe she was maybe with
12 Rudy. I don't exactly know what we were trying to
13 clarify but obviously, where Rudy's not -- his
14 involvement is not where he shot these two individuals.

15 Q. And did Armendariz -- did you debrief after
16 the interview with Armendariz?

17 A. I'm pretty sure we did. He probably told
18 me, hey, this is what she said, and this and that and
19 I'm pretty sure she did, and I did the same thing, but
20 I can't recall exactly what even Betty said to be
21 honest with you.

22 Q. And are you aware that Beatrice in her
23 interview stated that she knew Rudy wasn't involved in
24 the shooting?

25 A. Maybe then I knew that. I don't recall

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1 exactly what she said on the statement.

2 Q. Did you ever investigate how Beatrice knew
3 that Rudy wasn't involved?

4 A. No, sir, I didn't.

5 Q. How did this interview affect your
6 investigation -- your work on -- I'm trying not to use
7 the word "investigation."

8 A. Thank you.

9 Q. How did this interview affect your work on
10 the Electric Street murders?

11 A. Didn't change it. It was still the same.
12 Waiting for the next direction.

13 Q. As an El Paso Police Officer, have you felt
14 supported by your supervisors?

15 A. Sure. Yes, sir, I do.

16 Q. And why do you say the -- why do you say
17 yes?

18 A. I think they're -- we're all serving the
19 same purpose, get to the bottom, investigate, put
20 people in jail that need to be put in jail, hear cases,
21 I guess we're all the same goal, make El Paso safe.

22 Q. Yeah. There's camaraderie and solidarity?

23 A. Yes, sir.

24 Q. And what -- are there any ways in which you
25 don't feel supported by your immediate supervisors?

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1 A. No, not really, sir. They're very
2 supportive.

3 Q. And what about command staff, do you feel
4 supported by them?

5 A. Sure. I don't -- I don't directly work
6 with them but when I do see them out in the hallway,
7 they're really personal and they know your name and
8 yeah, they're really good people.

9 Q. Is there anything else they do that makes
10 you feel supported by them?

11 A. Good job. I heard you did this, keep up
12 the good work, stuff like that.

13 Q. And is there any way you don't feel
14 supported by command staff?

15 A. Not at this point, no, sir.

16 Q. What about -- what about in your history?
17 What about looking back on your career?

18 A. No. I think when I've gotten in trouble,
19 I've deserved it. They sat me down and they brought it
20 to my attention and I took care of it and I appreciate
21 everything they've done for me. It turned out worse if
22 they didn't.

23 Q. Well, tell me about that. Give me an
24 example if you can.

25 A. Well, just stuff that didn't get -- I mean,

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1 there were again no civil rights violations, just
2 knuckle-head stuff I'd done, like, hey, you know, what
3 don't do it again. We could write it up, take it up
4 but we're not. You're a good worker, you just screwed
5 up. You just had a brain fart there and I was, like,
6 you know what, you're right. That's it and it ended
7 right then and there.

8 Q. Yeah. And so when you say, is that kind of
9 like getting called to the principal's office when a
10 conversation like that happens?

11 A. Correct. Yes, sir.

12 Q. Okay. And so who -- and I guess it's --
13 and who would you have those conversations with?

14 A. I've had them with sergeants. I think the
15 majority of them probably stayed at the sergeant level.
16 I'm pretty sure there was lieutenants involved but they
17 probably told the sergeant, just take care of it, just
18 squash it right there.

19 Q. Any incidents involving someone above the
20 rank of lieutenant?

21 A. No, huh-uh.

22 Q. Okay. And can you tell me what -- can you
23 tell me a little more specifically what kinds of things
24 are discussed in those meetings, like, I understand not
25 civil rights violations but specifically, what are you

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1 being brought in to talk about in those situations?

2 A. Well, I remember I was -- oh gosh, this is
3 many, many years ago. I remember I was abusing my sick
4 leave because I was -- I'd just bought a house. I was
5 taking a lot of time off and I admitted it. Hey,
6 listen, I'm burning sick leave because I'm really not
7 sick but I'm doing and that was, like, dude, really?
8 Come on. You know better than that. Okay. I won't do
9 it again. Okay. I'm sorry, I apologize, but they
10 respected me. They know what kind of person I was.
11 They know it's not you doing stuff like that but let's
12 go ahead -- we're not going to let it go further.

13 Q. Yeah. What was the most serious issue you
14 were ever brought in to have a conversation about?

15 A. I think a couple of times I cursed at
16 people I shouldn't be cursing at civilians and I
17 admitted it. Did you curse at them? I go yeah, I did.
18 Why? Because I got mad and I did it. They wouldn't
19 listen to me. I asked them to leave and I cursed at
20 them. Yeah, I did it. And they got squashed right
21 then and there. I think that's probably it.

22 Q. Okay.

23 A. Yeah.

24 Q. And do I understand correctly that none of
25 this ever became IA files or something in your record,

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1 it was squashed before it became anything else?

2 A. That I know of, yes. Now, if they went
3 somewhere else and nothing came out of it, I don't
4 know. But from what I understood, yeah, they ended it
5 right there.

6 Q. So other than -- so how would you -- is
7 there a word you'd use for that kind of meeting that
8 kind of interaction?

9 A. An ass chewing.

10 Q. Ass chewing.

11 A. Yeah. I don't know -- I don't know if
12 there's an actual term, departmental policy. There
13 probably isn't but we believe that we're adult, we're
14 men, you know, let's just let's end it right there.
15 Let's just take care of it. Don't do it again.

16 Q. Have you ever gotten -- have you ever
17 received any sort of counseling beyond the informal ass
18 chewings that you talked about?

19 A. I can't recall if I did. I don't know if
20 it was maybe early in my career, maybe call or
21 something got big, we went to Internal Affairs and
22 something came out of it or it was unfounded, I don't.
23 Have i ever been accused of anything, something came
24 out of it, no. That I've gotten time or days or
25 suspension, nothing like that. Now, was there any type

<p style="text-align: right;">Page 158</p> <p>1 of counseling, formal counseling that maybe IA has, i 2 dont know. There could be. I'm not sure.</p> <p>3 Q. Nothing that you recall though?</p> <p>4 A. Oh, no, sir. Nothing major.</p> <p>5 Q. And you've been investigated for a 6 complaints of misconduct before; is that right?</p> <p>7 A. I believe I have, yes, sir. I can't recall 8 to be honest with you, yeah.</p> <p>9 Q. So what's your understanding of how the 10 Internal Affairs process works when a complaint is made 11 against you?</p> <p>12 A. What I understand is somebody files a 13 formal complaint, it gets investigated. If I -- if I 14 violate any type of policy then, yeah, I get 15 reprimanded, maybe I get a counseling or nothing comes 16 out of it, it's unfounded. Yeah. Or something on my 17 record, like, yeah, I was -- he got counsel, was it 18 written or it's unfounded, never happened.</p> <p>19 Q. And is it also possible to get suspended or 20 terminated based on a complaint?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And what's your understanding of what a 23 reprimand would be used versus a suspension or a 24 termination?</p> <p>25 A. That you did violate from my understanding</p>	<p style="text-align: right;">Page 160</p> <p>1 part of that have they influenced your conduct as a 2 police officer in any way?</p> <p>3 A. Well, I've always had that same thinking. 4 I mean, a lot of times they're just I didn't know any 5 better. I made a mistake but yeah, no. I'm always 6 trying to be -- do the right thing.</p> <p>7 Q. All right. Were you ever assigned -- was 8 Alejandro Guerra ever your partner?</p> <p>9 A. I worked with Alejandro Guerra. We worked 10 together on this on different shifts also evenings and 11 graveyards early in my patrol. We worked together. We 12 went to different calls together. We assisted each 13 other but I can't recall we actually worked together 14 maybe once or twice in the car together.</p> <p>15 Q. Okay. And how long did you work together 16 with him?</p> <p>17 A. On patrol, maybe five, six years give or 18 take.</p> <p>19 Q. Did he later become a detective?</p> <p>20 A. Yeah. We'd go into different shifts. Alex 21 passed away, gosh, I want to say maybe I was already on 22 10 years, so yeah, we were on different shifts but 23 yeah, we, like I said, we assisted each other on 24 different calls here and there.</p> <p>25 Q. Do you like working with Alex?</p>
<p style="text-align: right;">Page 159</p> <p>1 is you did violate some type of policy but maybe you 2 didn't know it was there or you aren't sure or you 3 didn't -- you knew better and you still did it and 4 yeah, you're going to get suspended. They're going to 5 buy your days.</p> <p>6 Q. And what was -- what is your experience 7 been being the subject of an Internal Affairs 8 investigation, what was your impression of those 9 investigations?</p> <p>10 A. I know they get investigated. They're 11 detectives with the police department. There's a 12 written -- somebody files a formal complaint. They get 13 statements from witnesses. Your involvement, what did 14 you do, what did you see, like, give a statement and 15 then I guess it goes up to a review board and if they 16 find there's enough then, yeah, some action will be -- 17 will happen.</p> <p>18 Q. And do you believe the process is fair?</p> <p>19 A. I believe it is, yeah. There is -- you 20 have civilians from what I understand sit on the panel 21 and then you have officers and from what I understand, 22 the officers are the worst ones. They usually give the 23 more reprimand than the civilians. Civilians believe, 24 oh, I don't think he did anything wrong.</p> <p>25 Q. And the investigations that you have been a</p>	<p style="text-align: right;">Page 161</p> <p>1 A. He was a really good guy, yeah.</p> <p>2 Q. Did you communicate well together?</p> <p>3 A. Yeah, we did.</p> <p>4 Q. Do you remember Maria Montelongo?</p> <p>5 A. Maria Montelongo, no, sir, I don't.</p> <p>6 Q. Do you remember an Internal Affairs 7 complaint about a woman who had been assaulted by her 8 husband and said that officers didn't show up when they 9 said they would?</p> <p>10 A. Gosh. No, sir, doesn't ring a bell. No, 11 sir.</p> <p>12 Q. I'm going to pull up a document here. And 13 this is Exhibit 10. This is IA0 -- I'm not going to 14 try to read from that. I'm going to scroll down in 15 this document a little. That's not right. Okay. So 16 I'm now on Page 18 of Exhibit 10. Do you see this 17 document?</p> <p>18 A. Yes, sir, I do.</p> <p>19 Q. And does this look to be a statement given 20 by Maria Lili Montelongo?</p> <p>21 A. Yes, sir, it does.</p> <p>22 Q. Okay. And this is on September 7th, 2004; 23 is that right?</p> <p>24 A. That's correct.</p> <p>25 Q. I'm scrolling down a little bit. Do you</p>

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1 see where it says, "My daughter, Jo Ann Montelongo, 21
2 years of age, was assaulted by her boyfriend and the
3 father of her son"?

4 A. Yes, sir, I do.

5 Q. And two paragraphs below where it says, "I
6 was present when Officers Guerra and Loya took the
7 information"?

8 A. Yes, sir, I do.

9 Q. This was at 313 South Ascarate, my house?

10 A. Yes, sir.

11 Q. Does that refresh your recollection at all?

12 A. It does not, sir. I'm sorry.

13 Q. That's fine. So off the cuff, you don't
14 remember anything about this right now?

15 A. I mean, I -- the address. I know -- I'm
16 familiar -- I'm not familiar but I know where that
17 address is. It's in Central. I mean, I've been to
18 that address not that particular address but on that
19 street multiple times. Yeah. I took information
20 reports all the time, assault cases.

21 Q. So if you were -- when you've been in --
22 when you've been the subject of an Internal Affairs
23 investigation, have you ever talked with the other
24 accused officers about the incident that the complaint
25 is about?

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1 A. I have talked to them, uh-huh.

2 Q. Okay. And what would -- what would be the
3 reason to talk to them after a complaint has been made?

4 A. Well, from what I understand once the
5 complaint is made, we're ordered to -- we're gagged and
6 we're no longer able to discuss it but before that,
7 like, hey dude, I heard so-and-so filed -- hey,
8 remember we were out there a couple of weeks ago, I
9 heard they filed a case on it. They're going to file a
10 complaint. Oh shoot, nothing happened. We didn't do
11 anything. Do you remember that? Yeah. Something to
12 that extent.

13 Q. Got it. So even though it -- so you would
14 -- you've never talked about it after you've gotten the
15 gag order; is that right?

16 A. Yes, sir, uh-huh. That's correct.

17 Q. But before you got the gag order, you might
18 learn that a complaint is coming?

19 A. Yes, sir, uh-huh.

20 Q. And in those instances, it would be natural
21 to say, hey, you know, what's this about and talk to
22 the other officers involved?

23 A. Yes, sir.

24 Q. Okay. I want to -- I know that you're not
25 recalling this right now. I am now scrolling down to

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1 PDF 22 and do you see that this appears to be Alejandro
2 Guerra responding to a direct order to disclose any and
3 all information about the case?

4 A. Yes, sir. I do see it.

5 Q. And I'm going to -- go ahead?

6 MR. DARNELL: You said PDF 22. You're on
7 Page 22, correct?

8 MR. HILKE: Yes, sir. I'm sorry. I'm --
9 I've been saying PDF 22 when I mean -- referring to the
10 page number of the PDF.

11 MR. DARNELL: Okay.

12 MR. HILKE: I'll just say page next time.

13 MR. DARNELL: I just want to make sure the
14 record made sense.

15 MR. HILKE: Yes, sir. We're still on
16 Exhibit 10 at Page 22.

17 BY MR. HILKE:

18 Q. Okay. So I want to scroll down here and I
19 just want to call your attention, I think I'll try to
20 highlight this and see if this works. Oops. Does this
21 appear to be Alejandro Guerra saying to the victim that
22 at 12:30 we would go and pick him up on the warrant?

23 A. [Reading] "I stated to the victim to go
24 about her business and at 12:30 we would go back and
25 pick him up on the warrant." I don't recall that

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1 incident to be honest with you with you, sir.

2 Q. I understand. And then below it says, "The
3 victim suggested 1:00 a.m. and I said that it was fine.
4 We would go and pick him up at that time." Is that
5 right?

6 A. That's what the statement says, yes.

7 Q. That's what the statement says. Yeah. And
8 I understand right now, you don't remember what was
9 said.

10 A. No, sir. I don't recall any of this.

11 Q. So I am now going to Page 27 of this
12 document. Do you see here that where this document
13 says, "I, Hector Loya, am under a direct order to
14 disclose any and all information"?

15 A. Yes, sir, I do.

16 Q. And does this appear to be a statement that
17 you made in reference to this investigation?

18 A. Correct.

19 Q. Okay. I am going to move down to Page 28
20 now and can you review, please, under Question Number 3
21 what your response was, yes, to Question Number 3?

22 A. "No, I never told her that we would go back
23 to the residence at 0100 to arrest her husband. The
24 complaint warrant going to be worked up on her husband.
25 The warrant would need a signature by a magistrate. If

<p style="text-align: right;">Page 166</p> <p>1 possible officers would attempt to apprehend her</p> <p>2 husband on this date. If unable to arrest her husband</p> <p>3 he would be arrested on a later date."</p> <p>4 Okay. What was the question, sir?</p> <p>5 Q. What you wrote here indicates that you're</p> <p>6 not aware of any commitment made to this woman about</p> <p>7 officers coming later that night, right?</p> <p>8 A. That's correct. Yes, sir.</p> <p>9 Q. But what Guerra wrote was that he told the</p> <p>10 woman that he would come back later that night; isn't</p> <p>11 that right?</p> <p>12 A. Yes, what I read earlier.</p> <p>13 Q. Do you have any explanation for that</p> <p>14 inconsistency?</p> <p>15 MR. DARNELL: I am going to object to the</p> <p>16 to the form of the question.</p> <p>17 A. I don't know, sir, to be honest with you.</p> <p>18 I don't know why that's different.</p> <p>19 BY MR. HILKE:</p> <p>20 Q. And when you are interviewed by IA, are you</p> <p>21 required to give anything you know that could be</p> <p>22 relevant to the complaint?</p> <p>23 A. Yes, sir.</p> <p>24 Q. So you can't hold back something just</p> <p>25 because they don't ask about it?</p>	<p style="text-align: right;">Page 168</p> <p>1 obviously, would be produced by the City as far as the</p> <p>2 police statements and that kind of stuff but like, the</p> <p>3 audio recording and the transcription of the Jesus</p> <p>4 Rodriguez conversation, I don't recall seeing that or</p> <p>5 hearing that prior. Do you know when y'all produced</p> <p>6 that?</p> <p>7 MR. HILKE: So I believe that that is the</p> <p>8 very first thing in the City's production.</p> <p>9 MR. DARNELL: Well, the City wouldn't have</p> <p>10 had the audio, wouldn't have had either one of those.</p> <p>11 MR. HILKE: I have it from the City, I</p> <p>12 believe.</p> <p>13 MR. DARNELL: But how would the City have</p> <p>14 gotten a recording that Danny Villegas's defense team</p> <p>15 had made with their presumably private investigator</p> <p>16 trying to talk to somebody he holds out to be my</p> <p>17 client?</p> <p>18 MR. HILKE: So I believe that these have</p> <p>19 been produced. Let's -- can we go off the record,</p> <p>20 please?</p> <p>21 ONLINE VIDEO TECH: Sure. We are off the</p> <p>22 record the time is 2:21.</p> <p>23 (Break from 2:21 p.m. until 2:30 p.m.)</p> <p>24 ONLINE VIDEO TECH: We are back on the</p> <p>25 record for the deposition of Detective Hector Loya</p>
<p style="text-align: right;">Page 167</p> <p>1 A. That's correct, mm-hmm.</p> <p>2 MR. HILKE: How about a five-minute break?</p> <p>3 MR. DARNELL: Works for me.</p> <p>4 MR. HILKE: Let's go off the record.</p> <p>5 ONLINE VIDEO TECH: All right. We are off</p> <p>6 the record the time is 2:08.</p> <p>7 (Break from 2:08 p.m. until 2:19 p.m.)</p> <p>8 ONLINE VIDEO TECH: We are back on the</p> <p>9 record for the deposition of Detective Hector Loya</p> <p>10 being conducted by videoconference. My name is Sydney</p> <p>11 Little. Today is May 9th, 2022, and the time is 2:19.</p> <p>12 MR. DARNELL: Wally, before we start back</p> <p>13 on the deposition, have y'all produced, previously</p> <p>14 produced that audio recording or any of the exhibits</p> <p>15 that you are using here today in your disclosures?</p> <p>16 MR. HILKE: I'm sorry. Do you mean -- when</p> <p>17 you say in our disclosures, do you mean have they been</p> <p>18 produced in discovery or do you mean separate from them</p> <p>19 being in discovery?</p> <p>20 MR. DARNELL: Being in discovery or</p> <p>21 identified in any of your initial disclosures.</p> <p>22 MR. HILKE: Yeah. I believe everything</p> <p>23 we've got has been produced in discovery and Bates</p> <p>24 stamped, et cetera.</p> <p>25 MR. DARNELL: Because a lot of this stuff,</p>	<p style="text-align: right;">Page 169</p> <p>1 being conducted by videoconference. My name is Sydney</p> <p>2 Little. Today is May 9, 2022, and the current time is</p> <p>3 2:30.</p> <p>4 MR. HILKE: Thank you.</p> <p>5 BY MR. HILKE:</p> <p>6 Q. So, Detective, I want to take you back to</p> <p>7 the document I was just showing you for a second. I'm</p> <p>8 sorry. That didn't quite work for me.</p> <p>9 Detective, are you able to see a document</p> <p>10 on your screen right here?</p> <p>11 A. Yes, sir, I can.</p> <p>12 Q. Okay. And is this the same statement we</p> <p>13 were just looking at, it's Page 28 of Exhibit 10?</p> <p>14 A. Yes, sir, it does, mm-hmm.</p> <p>15 Q. Okay. Could you please review your answer</p> <p>16 to question Number 2 here?</p> <p>17 A. Okay. I did read it.</p> <p>18 Q. Okay. Now, in this statement you're asked</p> <p>19 whether you instructed the victim to pretend like</p> <p>20 nothing happened. Is that right?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And you say that you didn't say that and</p> <p>23 you didn't hear Guerra say that. Is that right?</p> <p>24 A. Correct, uh-huh.</p> <p>25 Q. But you do know that your partner was</p>

<p style="text-align: right;">Page 170</p> <p>1 inside the kitchen with the victim -- with the</p> <p>2 complainant, I guess, right?</p> <p>3 A. According to my statement, yes, sir.</p> <p>4 Q. And so it says you didn't hear everything</p> <p>5 they said to each other.</p> <p>6 A. Correct.</p> <p>7 Q. And then in your response you reviewed</p> <p>8 before -- I'm sorry. Below that, there is a question</p> <p>9 Number 3, right?</p> <p>10 A. Yes.</p> <p>11 Q. And you are asked to explain what was said</p> <p>12 to the complainant's daughter, right?</p> <p>13 A. Correct.</p> <p>14 Q. And --</p> <p>15 MR. DARNELL: Objection. Not the</p> <p>16 complainant's daughter. I'm sorry, yes. You're</p> <p>17 correct. My apologies.</p> <p>18 BY MR. HILKE:</p> <p>19 Q. And what -- and did you write that what was</p> <p>20 said to the complaint's daughter was, "If possible,</p> <p>21 officers would attempt to apprehend her husband on this</p> <p>22 date." Is that right?</p> <p>23 A. Yes. That's what the statement says,</p> <p>24 uh-huh.</p> <p>25 Q. And you don't mention anything under Number</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. And has he stood up to others on behalf of</p> <p>2 El Paso Police Officers?</p> <p>3 A. From what I have seen, yes, sir, he has.</p> <p>4 Q. And what have you seen?</p> <p>5 A. That he always, especially out to the media</p> <p>6 he always has our back, talking good about us and, you</p> <p>7 know, he supports us all the time, tries to do -- get</p> <p>8 us more money, more cars, et cetera, et cetera.</p> <p>9 Q. Yeah. And he's -- he's pushed back, he's</p> <p>10 spoken against prosecutions of El Paso Police Officers;</p> <p>11 is that right?</p> <p>12 A. I don't know about that, sir.</p> <p>13 Q. Okay. And so are you aware of any conflict</p> <p>14 between the El Paso Police Department and the DA's</p> <p>15 office?</p> <p>16 A. No, sir, not that I know of.</p> <p>17 Q. And do you feel -- do you feel that</p> <p>18 officers are unfairly accused of misconduct?</p> <p>19 MR. DARNELL: Objection, form.</p> <p>20 A. No, sir. I don't think they're unfairly</p> <p>21 accused of anything.</p> <p>22 BY MR. HILKE:</p> <p>23 Q. Okay. Did John Mimbela come up in the</p> <p>24 Electric Street murder investigations?</p> <p>25 MR. DARNELL: Can you repeat that? It</p>
<p style="text-align: right;">Page 171</p> <p>1 3 that there's something you might not have heard, do</p> <p>2 you?</p> <p>3 A. Can you repeat that again? I'm sorry.</p> <p>4 Q. That's fine. Under your response to</p> <p>5 question Number 3, you don't mention anything about</p> <p>6 maybe your partner said something you didn't hear, do</p> <p>7 you?</p> <p>8 A. No. What I said on 2, I didn't say on</p> <p>9 Number 3.</p> <p>10 Q. And you say that you know -- and you don't</p> <p>11 suggest in any way that this answer is incomplete,</p> <p>12 right?</p> <p>13 A. No, sir.</p> <p>14 Q. Okay. And Craig Allen is the El Paso Chief</p> <p>15 of Police, right?</p> <p>16 A. Correct. Yes, sir.</p> <p>17 Q. I am going to stop sharing this now. And</p> <p>18 was he Chief of Police when you started at Crimes</p> <p>19 Against Persons?</p> <p>20 A. Yes, sir, he was.</p> <p>21 Q. And do you feel that Greg Allen supports</p> <p>22 officers in the El Paso Police Department?</p> <p>23 A. Yes, sir, he does.</p> <p>24 Q. Does he have their back?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 173</p> <p>1 broke up.</p> <p>2 BY MR. HILKE:</p> <p>3 Q. Yes. Did a John Mimbela come up in the</p> <p>4 Electric Street murder investigations?</p> <p>5 A. Yes, sir, he did.</p> <p>6 Q. How did he come up?</p> <p>7 A. I -- I knew of him because of what I would</p> <p>8 see on the media on the news. I know he was the</p> <p>9 biggest advocate. I know he was fighting for the</p> <p>10 defendant. During the interviews that we were doing,</p> <p>11 the statements that were taken, I know some of the</p> <p>12 witnesses had said that Mr. Mimbela and another female</p> <p>13 had approached them or called them on the phone or met</p> <p>14 with them to question them about that -- about the</p> <p>15 murder.</p> <p>16 Q. And what was your -- and what impression</p> <p>17 did you get or strike that.</p> <p>18 Were you -- what -- as you were working</p> <p>19 these murders, were you interested in information about</p> <p>20 John Mimbela?</p> <p>21 A. No, not really. Again, what I have seen on</p> <p>22 the media and I knew of him. I know he owned a</p> <p>23 construction company here in El Paso.</p> <p>24 Q. Was it part of what you were asked to look</p> <p>25 into?</p>

<p style="text-align: right;">Page 174</p> <p>1 A. No, sir, no.</p> <p>2 Q. Okay. So that was -- and so did you feel</p> <p>3 like you had to follow up on any information -- was</p> <p>4 there any information about John Mimbela that came up</p> <p>5 as you were investigating these murders that you felt</p> <p>6 you had to follow up on?</p> <p>7 A. No, sir, not that I recall.</p> <p>8 Q. When did -- I want to ask about Detective</p> <p>9 Armendariz. Had you worked with Armendariz before your</p> <p>10 work together on the Electric Street murders?</p> <p>11 A. Yes, sir, we did.</p> <p>12 Q. How many times?</p> <p>13 A. Gosh. I originally worked with him when we</p> <p>14 were both at Central CID. When we first got promoted</p> <p>15 we worked together and then he went to CAP and I ended</p> <p>16 up there and we worked multiple cases together.</p> <p>17 Q. Did you get promoted at the same time?</p> <p>18 A. I want to say he was promoted maybe a year</p> <p>19 or two before I was.</p> <p>20 Q. And did you have the opportunity to work</p> <p>21 him on very many cases?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And what -- what was -- did you have the</p> <p>24 opportunity to observe sort of how he investigated</p> <p>25 cases or what his style was?</p>	<p style="text-align: right;">Page 176</p> <p>1 A. This particular case, sir, we were both</p> <p>2 tasked at the same time at the beginning.</p> <p>3 Q. Okay. So the very start was you and</p> <p>4 Armendariz come to the DA's office to interview</p> <p>5 Mr. Juarez?</p> <p>6 A. Juarez, correct, yes.</p> <p>7 Q. Okay. And was there a case agent?</p> <p>8 A. At that time, no, there was no case agent.</p> <p>9 Q. And during -- so during the whole of 2014</p> <p>10 as you are working the Electric Street murders there is</p> <p>11 no case agent; is that right?</p> <p>12 A. That I know of, no, sir.</p> <p>13 Q. And is that unusual to have -- to be</p> <p>14 working on a case where there is no case agent?</p> <p>15 A. From experience, usually the case agent</p> <p>16 wasn't assigned or you were told you were the case</p> <p>17 agent until after the investigation is done and then</p> <p>18 that person was in charge of putting all everything</p> <p>19 together, the binders and then walking it over to the</p> <p>20 DA's office.</p> <p>21 Q. Was there a case agent assigned at the end</p> <p>22 of the work on the Electric Street murders?</p> <p>23 A. From the time I was off that I stopped</p> <p>24 following up probably in March, there was nothing -- no</p> <p>25 case agent and again, when I jumped back in December I</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Yes, sir.</p> <p>2 Q. What was his style?</p> <p>3 A. Very, very professional, very smart. As a</p> <p>4 matter of fact, I think a lot of stuff that I know</p> <p>5 today is because of him. I've always modeled after</p> <p>6 him, very intelligent, very thorough, great</p> <p>7 investigator, the way he speaks to people, yeah, he --</p> <p>8 because he's done really good.</p> <p>9 Q. I think you said similar about Ray Sanchez,</p> <p>10 right?</p> <p>11 A. Correct. Yes, sir.</p> <p>12 Q. These are two very good detectives?</p> <p>13 A. Yes, sir.</p> <p>14 Q. How would you -- were they at the very top</p> <p>15 of the group of CAP or how would you compare them to</p> <p>16 other detectives?</p> <p>17 A. You know what, Detective Sanchez was there</p> <p>18 many, many years, a lot of experience. I looked up to</p> <p>19 him on that end. Detective Armendariz maybe he had</p> <p>20 been there maybe a year before I got there but, yeah, I</p> <p>21 know he picked it up really quick and even the older</p> <p>22 guys looked up to him, very -- I mean, yeah. They were</p> <p>23 very good detective.</p> <p>24 Q. Okay. And was Armendariz working the case</p> <p>25 before you joined it?</p>	<p style="text-align: right;">Page 177</p> <p>1 had no idea there was a case agent.</p> <p>2 Q. Okay. And so did you and Armendariz play</p> <p>3 different roles in this investigation? I'm sorry. I</p> <p>4 keep using that word. In your work on the murders.</p> <p>5 A. No. We -- nobody, we actually we were the</p> <p>6 first few interviews we did them together. We rode,</p> <p>7 looked for the people, okay, you talk to him, you take</p> <p>8 a statement from him, I'll take statement from her and</p> <p>9 yeah, that was, yeah. We worked together.</p> <p>10 Q. So neither one of you was running the show?</p> <p>11 A. No, sir, hmm-mm.</p> <p>12 Q. Okay. As you conducted interviews in this</p> <p>13 case, did you come up with ideas on who you should talk</p> <p>14 to next?</p> <p>15 A. No, sir.</p> <p>16 Q. Did Armendariz come up with ideas on who to</p> <p>17 talk to next?</p> <p>18 A. That I recall, no, sir.</p> <p>19 Q. And did Sanchez come up with ideas on who</p> <p>20 to talk to next?</p> <p>21 A. That I recall, no, sir.</p> <p>22 Q. And were you -- was it more of checking the</p> <p>23 boxes that the DA wanted you to check on this case?</p> <p>24 A. In those -- I guess you could put it in</p> <p>25 those words, correct, yes, sir.</p>

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1 Q. Did the name Tony -- Tony Kosturakis come
2 up in your investigation?

3 A. No, that one doesn't sound familiar, no,
4 sir.

5 Q. What about an -- what about a tape, an
6 audio recorded statement from 1994, did that come up in
7 your investigation?

8 A. No, sir, I never heard that.

9 Q. I want to show you another exhibit here. I
10 am now sharing Exhibit 11. Do you see this in front of
11 you?

12 A. Yes, sir, I do.

13 Q. And scrolling down, does this appear to be
14 a letter from the district attorney on April 15, 2014?

15 A. Looks like one, yes, sir.

16 MR. HILKE: Did I do this wrong? Excuse
17 me. I'm going to stop sharing because I don't actually
18 want to show you that right now.

19 BY MR. HILKE:

20 Q. Did Armendariz ever talk to you about a
21 Tony Kosturakis?

22 A. That I could recall, no, sir. Maybe he
23 did, but I don't remember that.

24 Q. Yeah. And it wasn't something that you
25 ever invest -- that you ever tried to interview anybody

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1 about in this case?

2 A. That name is not on my supplement so I
3 don't think I did any type of file on that particular
4 person.

5 Q. And if Armendariz were looking into it,
6 would he have discussed that with you?

7 A. Maybe he could have said, hey, you know
8 what, I just discovered this other guy, this was his
9 involvement, let me go and I'm going to try to reach
10 out to him. Okay, good. Maybe that did happen. I
11 don't recall.

12 Q. Did you -- so when working on another a
13 case with another detective, was it your practice to do
14 solo work without informing the other detectives?

15 A. Sure. We could do that, umm umm.

16 Q. How would you make sure that the detectives
17 knew about that work?

18 A. If it was good -- if it was a good lead, a
19 good witness I would definitely say, hey, listen. I
20 just -- hey, this person came up. This is what they
21 told me, maybe we should bring that person in or, I
22 mean, a lot of our cases we, you know, we go on a
23 Easter egg hunt here and a lot of stuff didn't pan out
24 to anything and there was no need to share that
25 information with them.

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1 Q. Is it important to document the leads that
2 don't pan out?

3 A. Yes, sir.

4 Q. And does that sort of go back -- well,
5 strike that.

6 During your investigation were you aware of
7 the Wayne Robert Williams?

8 A. Wayne Robert Williams? I don't recall. It
9 doesn't sound familiar.

10 Q. Do you remember ADA Myers ever mentioning
11 that name to you?

12 A. I don't recall, no, sir. He might have but
13 I don't recall.

14 MR. HILKE: Give me just one second here.

15 BY MR. HILKE:

16 Q. And I'm not going to ask you to refresh
17 your recollection at this time but I am going to
18 represent to you that I didn't see the name Wayne
19 Robert Williams in your -- in your supplemental report
20 so I'm not hiding the ball from you here.

21 A. Okay.

22 Q. Trying not to. With that said, do you
23 recall making a decision about whether to pursue
24 information about Wayne Robert Williams?

25 A. Again, no, sir, it doesn't -- it doesn't

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1 ring a bell.

2 Q. Do you remember a decision about whether to
3 try to take a statement from him?

4 A. He might have mentioned it to me in
5 conversation but I don't recall, sir.

6 Q. Okay. And are you aware that Wayne Robert
7 Williams before -- someone had stolen a gun from him
8 around the time of the Electric Street murders?

9 MR. DARNELL: You broke up, Wally. Can you
10 repeat that?

11 BY MR. HILKE:

12 Q. Yes. Are you aware that Wayne Robert
13 Williams said that Rudy Flores had stolen a gun from
14 him around the time of the Electric Street murders?

15 A. No, sir. I don't -- I don't remember that
16 statement.

17 Q. And had you been aware of that, would it
18 have been relevant to your work on the Electric Street
19 murders?

20 A. If somebody was giving me statement and
21 telling me that, yeah, I would definitely put that in
22 my statement.

23 Q. Understood. I guess what I am asking is if
24 that information had come to you while you were working
25 on those cases, you know, anyway could have been from a

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1 document or an interview or whatever, would that --
 2 would that have been something -- would you have looked
 3 into that -- would you have looked into that
 4 information?

5 A. I guess because the way this case -- we
 6 were doing this, I probably -- that information would
 7 have come forward, I would probably reached out to the
 8 ADA and said, hey, listen. Do you remember back in '93
 9 detectives ever talked to this person, and then he
 10 looks it up. Yeah, guess what, we've already clarified
 11 that or you know what, that's good information. Why
 12 don't we follow up on that. I think I would have done
 13 that would have played out that way.

14 Q. And during this -- during the case, did you
 15 ever follow up with the ADA to share information that
 16 you wanted to know if you should look into or not?

17 A. No, sir.

18 Q. And were you -- did you know that Rudy
 19 Flores was actually a witness to a shooting apparently
 20 committed by Wayne Robert Williams shortly after the
 21 Electric Street murders?

22 A. Maybe it was mentioned back then but I
 23 don't remember that I don't recall that.

24 Q. And if you had become aware of that, would
 25 it have affected your work on the Electric Street

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1 murders in any way?

2 A. Again, I would have asked the ADA, hey, do
 3 you know if they ever looked into this? This what is
 4 we've been told. Do you want us to go and clarify that
 5 or you know, you know what, they already spoke to him
 6 20 years ago, yeah, definitely it's important.

7 Q. So now I'm going to show you the thing I
 8 was trying to show you before. I'm now sharing is
 9 Exhibit 11. Detective, can you see this document?

10 A. Yes, i could.

11 Q. And does it appear to be a letter from the
 12 district attorney's office on April 15, 2014?

13 A. Yes, sir, it does.

14 Q. And it looks like it's addressed to Mr. Joe
 15 Spencer; is that right?

16 A. Yes.

17 Q. Do you know who Joe Spencer is?

18 A. Yes, sir, I do.

19 Q. Who is he?

20 A. He's an attorney.

21 Q. Was he involved in this case?

22 A. Yes, sir, he was.

23 Q. How was involved?

24 A. He was defense attorney for Daniel
 25 Villegas.

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1 Q. And I am now -- I want to call your
 2 attention to the second paragraph that starts on March
 3 17, 2014. Do you see that now?

4 A. Yes, sir, I do.

5 Q. And the writer seems to say that -- or the
 6 letter says that, "I," and I believe this is DA Myers
 7 and James Bonneau, "spoke with Wayne Williams." Do you
 8 know who James Bonneau is?

9 A. No, sir.

10 MR. DARNELL: For the record, it's James
 11 Bonneau.

12 MR. HILKE: Ah. Thank you.

13 BY MR. HILKE:

14 Q. And do you see the next sentence where it
 15 says, "Mr. Williams stated that Rudy Flores stole a gun
 16 from him but that it was a .38 special"?

17 A. I do see that.

18 Q. And do you see the next one where it says,
 19 "That gun was stolen after the murders on Electric
 20 Street"?

21 A. Yes, I do.

22 Q. Okay. And I am going to scroll down to the
 23 bottom. I'm now going to Page 2. Do you see Kyle
 24 Myers's signature at the bottom of this letter?

25 A. Yes, sir.

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1 Q. Have you ever seen this letter before?

2 A. No, sir, I haven't.

3 Q. And the information about Wayne Williams
 4 here, was that provided to you?

5 A. If it's not on my supplement, sir, I -- it
 6 wasn't given to me.

7 Q. Okay. I am going to stop sharing now. Do
 8 you remember interviewing Manuel Gilberto Cuellar?

9 A. Yes, sir, I do.

10 Q. Okay. And he's Celia Fierro's husband; is
 11 that right?

12 A. Yes, sir.

13 Q. And he wasn't a witness to any of the
 14 events of the Electric Street murders, right?

15 A. Correct.

16 Q. But he wanted to give you a statement and
 17 so you took one from him?

18 A. Yes.

19 Q. And did Detective Armendariz interview
 20 anyone at the same time you were talking to Manuel?

21 A. Yes, Celia Fierro. Yeah.

22 Q. Okay. And so you did both those interviews
 23 at the same time; is that right?

24 A. Correct.

25 Q. Okay. Did you discuss your plan for the

Page 186

1 interviews with Armendariz beforehand?

2 A. Probably did, yes, sir.

3 Q. And what did you discuss?

4 A. I don't remember exactly but I guess same

5 thing, I'll meet with Celia, get her side of the story.

6 Again, I don't know why we -- I got a statement from

7 the husband. I don't know if he said, hey, I want to

8 give a statement, too, because of what's going on with

9 the Mimbela's, this private investigator or we just

10 decided you know what, while I'm talking to her, why

11 don't you grab and get a quick statement from the

12 husband.

13 Q. Okay. And you remember that conversation

14 with Manuel?

15 A. After reading my statement, yes.

16 Q. And what was, what was Manuel's demeanor

17 during that conversation?

18 A. Good. I mean, he was calm, relaxed,

19 telling me what happened a few days ago. He was on his

20 way to San Antonio or on the way back after a little

21 vacation. So.

22 Q. And did you discuss the results of those

23 interviews afterwards?

24 A. Yes.

25 Q. And what did you discuss?

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1 A. I told Detective Armendariz what the

2 husband said and I'm pretty sure he told me what

3 Ms. Fierro said. I can't recall exactly what he told

4 me.

5 Q. Do you remember anything else about that

6 conversation?

7 A. No, sir, I can't recall.

8 Q. And did these interviews, did they -- did

9 they guide your work on the Electric Street murders at

10 all?

11 A. No, sir. Again, waiting for, you know,

12 next instructions.

13 Q. You were waiting for your next

14 instructions?

15 A. Yes, mm-hmm.

16 Q. Who was the district attorney in 2014?

17 A. Esparza, Jamie Esparza.

18 Q. Did he have a history with Daniel

19 Villegas's prosecution?

20 A. Oh, I -- no clue, sir, I have no idea.

21 Q. Did he ever engage with your work in 2014

22 in any way?

23 A. I never met Mr. Esparza. Maybe I saw him

24 out in the street that's about it but I've never had

25 any conversation with him.

Page 188

1 Q. Did you have any understanding of whether

2 he was paying any attention to this -- to the work you

3 were doing?

4 A. No, sir, not that I know of.

5 Q. Or to the Electric Street murders

6 generally?

7 A. No, sir.

8 Q. And when you were working on the Electric

9 Street murders, how high of a priority was?

10 A. To be honest with you, sir, it was go get

11 his interview and then after we got that interview we

12 didn't have any more leads, I'd go back and work my

13 other cases until we got the next instruction whether

14 it was a few days -- but I wasn't actively working it

15 when I wasn't being told to go talk to that person.

16 Q. Sure.

17 A. We had no leads. We didn't do anything on

18 it. It was just idling until we were told to do

19 something else.

20 Q. So outside of what's noted in your

21 supplement, you were not actively investigating this

22 case?

23 A. No, sir.

24 Q. And did you have any indication -- were you

25 given any indication by the ADA Myers of how important

Page 189

1 of a case this was?

2 A. Not exactly from him but I know it was

3 pretty big because it was on the news. It was like

4 weekly. It was pretty big here in town.

5 Q. So you would see on the news pretty often

6 information about this case you're working on at the

7 same time?

8 A. I think in the beginning, yes, sir. I

9 think when defendant Villegas was released on bond and

10 they were going to re-try the case yeah. Yeah, it was

11 big. I don't know if after that it was weekly, it was

12 coming out but yeah, I knew it was a big case.

13 Q. So that's sort of outside of the

14 department. What about within the department?

15 A. You know, I don't know if we ever talked

16 about it, like, there at work or our supervisors would

17 follow up, hey, have you guys -- what's going on, like,

18 other cases normally, hey, did you ever follow up on

19 this person? No, again, it was just one of those -- it

20 just sat there and wait for the next direction, but

21 yeah, wasn't.

22 Q. So other than what's on the news, no

23 different than any other case?

24 A. Correct, yes, sir.

25 Q. Other than Armendariz and Sanchez, did any

Page 190

1 other detectives work with you on the Electric Street
2 murders?

3 A. That I recall, no, sir. I think it was
4 just us three.

5 Q. You're not aware of any other detectives
6 who were involved?

7 A. Again, when I stopped in March and I
8 start -- and I helped out that one more time in
9 December, those nine months I don't know if maybe they
10 grabbed another detective, hey, go with me because
11 John's not here or Ray's not here, I don't know to be
12 honest with you, if that ever happened or after
13 December.

14 Q. Did you ever find out what happened in the
15 months you weren't involved?

16 A. You know what, sir, to be honest with you,
17 I -- not that I don't care but we're just so busy and
18 we've got other stuff that I -- if I don't need to know
19 I don't ask and I just keep working my own cases and
20 it's funny because people ask me, hey, what happened
21 here. I don't know. Well, you worked there. No. We
22 just got so much work we don't even care what unless
23 I'm involved then I'll ask but otherwise, I really
24 don't -- or maybe it will be, like, hey, how's your
25 case going? Oh it's crazy. We're doing this or doing

Page 191

1 more maybe like that but as far as details, no. I
2 didn't follow up on that.

3 Q. Do you know whether the witness -- do you
4 know the name Karla Terrazas?

5 A. I'm sorry? Karla?

6 Q. Karla Terrazas?

7 A. Karla Terrazas? Doesn't sound familiar,
8 sir.

9 Q. Do you remember if there being mentioned a
10 -- this would have been with Celia Fierro or her
11 husband, do you remember mention of a woman who was
12 present with Celia when John Miranda came to Colorado?

13 A. Yes. When I took a statement from the
14 husband, Mr. Cuellar, he did mention that there was --
15 back I think in 2011, 2012, that there was a female and
16 it was Mr. Mimbela, Mr. Mimbela's wife and another
17 female that went down to Colorado to go speak to his
18 wife, but I don't think he ever gave me a name or I
19 never asked or he didn't know.

20 Q. Got it. I am going to -- one second. So
21 do you remember why you and Armendariz wanted to talk
22 to Celia Fierro?

23 A. Again, on my supplement I don't know why or
24 how she came into play, to be honest with you. I know
25 where Mr. Juarez led to Sally Flores, Betty Flores, but

Page 192

1 then there was another little maybe another 30 days
2 before we were given a couple of names to do follow-ups
3 on or look up, I think one was Dan Hernandez that I
4 looked up. I found him somewhere in Texas and
5 according to my supplement and the next thing I know I
6 get a phone call from Mr. Cuellar and that's when we're
7 starting to get a statement from them. I don't know
8 where -- where she came into play. I think they were
9 -- according to my notes, I think the DA's told them
10 reach out to these detectives and gave them our number.

11 Q. Okay. So does it sound right that --
12 sorry. One moment. I'm going to show you an exhibit
13 now. This is Exhibit 13. I am going to scroll to the
14 top of the document now. Does this appear to be
15 Detective Armendariz's supplemental report?

16 A. Yes, sir, it does.

17 Q. Okay. And I am now scrolling down and I am
18 on Page 8 of Exhibit 13. Do you see where it says,
19 "The undersigned took the statements from Fierro"?

20 A. Yes, sir.

21 Q. Okay. And I am scrolling down still on
22 Page 8. So on -- so I am pointing up to the paragraph
23 at the top of the page and do you see in Ms. Fierro's
24 statement where she talks about -- okay. Let's go from
25 here. Do you see where it says, "A few years ago an

Page 193

1 old friend of mine reached out to me on Facebook,
2 Jenny."

3 A. Yes, sir. I do see that.

4 Q. And then it says, "She wanted to reconnect
5 with me and we made arrangements to meet up."

6 A. Yes.

7 Q. And then a little bit lower it says, "When
8 I met her, I went to meet her and she was with a
9 couple, one of them was John Mimbela."

10 A. Yes, sir.

11 Q. And then a little bit lower she says, "My
12 kids were there and another friend Karla."

13 A. Yes.

14 Q. And it says, "Karla Terrazas and I were
15 best friends"?

16 A. Yes.

17 Q. Okay. I'm scrolling down a little bit and
18 do you see at the bottom where it says, "Karla got mad
19 and told Jenny and Mimbela that they were talking about
20 her two friends that were killed"?

21 A. Yes.

22 Q. And that Karla said she was friends with
23 those two guys?

24 A. Yes.

25 Q. And that they had been at her party.

Page 194

1 A. Yes.

2 Q. And here sort of at the bottom, like, "I

3 heard her. I heard Karla get upset and said, 'Rudy

4 wouldn't have done that.'"

5 A. Yes.

6 Q. Okay. So did Armendariz ever discuss Karla

7 Terrazas with you?

8 A. Maybe he did, sir, but I don't recall.

9 Q. Okay. And do you remember doing any

10 follow-up about Karla Terrazas?

11 A. That's not on my statement. Ms. Terrazas,

12 so no, I didn't do any follow-ups.

13 Q. Okay. I'm going to stop sharing that now.

14 So you said, let me make sure I have this right. You

15 said earlier that what we reviewed as Exhibit 2, the

16 supplemental report, those are the only notes you took

17 on this case; is that right?

18 A. Yes, sir. That I could recall, yes.

19 Q. And you went to different -- I'm sorry.

20 Strike that.

21 Did you take any handwritten notes during

22 this investigation?

23 A. I'm pretty sure I did if I had like time,

24 space, yes.

25 Q. And so the handwritten notes do they still

Page 195

1 exist?

2 A. No. If I had the notes they would be

3 shredded. I don't save notes. I don't save anything.

4 Q. Okay. And are you aware of any notes that

5 Detective Armendariz took during the investigation?

6 A. I'm pretty sure he took notes but I'm not

7 aware of them, yeah.

8 Q. And are you aware of anything -- okay.

9 That's -- okay. And what about Detective Sanchez, are

10 you aware of any notes that he took during the

11 investigation?

12 A. I would guess he did take notes but I'm,

13 again, I'm not sure where they're at or if he has them.

14 MR. HILKE: Can we take a five-minute

15 break? I'm almost done here.

16 MR. DARNELL: Yes.

17 ONLINE VIDEO TECH: All right. We are off

18 the record the time is 3:06.

19 (Break from 3:06 p.m. until 3:14 p.m.)

20 ONLINE VIDEO TECH: We are back on the

21 record for the deposition of Detective Hector Loya

22 being conducted by videoconference. My name is Sydney

23 Little. Today is May 9th, 2022, and the current time

24 is 3:14 p.m.

25 MR. HILKE: Now, Jeep, for the record I'll

Page 196

1 just note that we found the production of the audio

2 file and the transcript and forwarded it to your email

3 address which I believe you have received.

4 MR. DARNELL: Correct, yes. There was

5 some -- my email address is not on there correctly but

6 my dad's was, so we did have it. We did receive it

7 prior to today's deposition.

8 MR. HILKE: Thank you, sir.

9 BY MR. HILKE:

10 Q. Detective, do you recall any portions of

11 your work on the Electric Street murders that I haven't

12 asked you about today?

13 A. Let me see, the Manuela, Mr. Cuellar. I

14 think that's it, sir. I know there was another two

15 people that the ADA asked to us do follow-ups on.

16 There was a Daniel Hernandez that I did a follow-up --

17 oh, I think we did talk about it. I found one in --

18 somewhere in Texas but I never did any follow-ups on

19 that one. I -- I can't think of anything else.

20 Q. Why did you never follow up on Daniel?

21 A. I don't know. I can't remember if we told

22 him he was outside of El Paso and they said, okay,

23 don't just or maybe since I got pulled in March, I

24 don't know if Detective Armendariz or Detective Sanchez

25 ever followed up with that person to be honest with

Page 197

1 you. I don't know.

2 Q. Just sort of going over it chronologically,

3 do you recall anything else about how you first became

4 involved in the investigation?

5 A. Again, it was just one of those where John,

6 Hector, I need you to go down to the DA's office. Go

7 speak to ADA so-and-so, need you guys to take a

8 statement regarding the Daniel Villegas case. Okay.

9 We went down there.

10 Q. Okay. And anything else you recall about

11 that that you didn't already mention during this

12 deposition?

13 A. No, sir. I think that's -- that I could

14 recall.

15 Q. And then what about during those first few

16 months, you know, when you interviewed Juarez and you

17 interview Fierro's husband and you're following up on

18 those leads, do you remember anything else that you

19 didn't discuss during our deposition today?

20 A. No, sir. I think we got it all covered.

21 Q. And then finally, that last little bit when

22 you got pulled in to help with Oscar Gomez's interview,

23 do you remember anything at all about that portion of

24 your work on this case?

25 A. No, sir, hmm-mm. Just what you asked me,

Page 198

1 what I told you.

2 Q. And is there anything that you test --

3 actually, I have one other topic for you. What is your

4 current -- do you have an estimation of your current

5 net worth?

6 A. Wow. When you say net worth you mean, like

7 my home, my house?

8 Q. Yeah. Like--

9 A. Cash on hand or --

10 Q. Yeah. Let's add it up. How about equity

11 in your house?

12 A. Gosh. Maybe a couple of hundred thousand.

13 Q. Do you have a mortgage right now?

14 A. Yes, I do.

15 Q. How much is left on the mortgage?

16 A. Probably about 180.

17 Q. 180. And how much was it when you took it

18 out?

19 A. Gosh. I know I've refinanced a couple of

20 times every time the interest goes down. When I first

21 bought the house, probably 280 maybe.

22 Q. And do you own a car?

23 A. Yes, sir, I do.

24 Q. Okay. And how many cars?

25 A. We have three cars.

Page 199

1 Q. Okay. And do you have loans on them or are

2 they paid off?

3 A. I have one loan on one of them.

4 Q. Okay. And just ballpark what's the value

5 of your cars?

6 A. Sheesh. I'm not a big fancy car guy.

7 Maybe like 60,000 on both of them.

8 Q. And so you said both of them but have you

9 three cars?

10 A. I'm sorry, on all three of them, yeah.

11 Q. Got it. And what's the balance on the

12 loan?

13 A. Probably -- probably about \$8,000.

14 Q. And what about sort of cash on hand?

15 A. You've got to ask my wife all that. She's

16 the accountant in our family. I don't know. Maybe,

17 does that include my -- my what do you call it my

18 stocks and all that stuff or just what I have in the

19 bank right now?

20 Q. Can you -- can you give me them separate

21 please?

22 A. Cash on hand maybe about \$5,000 in the

23 bank.

24 Q. Okay. And what about stocks?

25 A. Maybe 150,000.

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1 Q. And is that -- is that just in a regular

2 account or a retirement account?

3 A. It's a retirement account.

4 Q. And you are currently married?

5 A. Yes, I am.

6 Q. And you and your wife your finances are

7 merged together?

8 A. Correct. Yes, sir.

9 Q. Does she have any assets that beyond what

10 you have just discussed?

11 A. Yes.

12 Q. What does she have?

13 A. Same thing, pension, stocks, stuff like

14 that.

15 Q. Okay. And the pension -- the stocks, are

16 those in a retirement account?

17 A. Retirement accounts, correct, uh-huh.

18 Q. And what's the approximate value of those

19 accounts?

20 A. Maybe another 150.

21 Q. Okay. And do you carry credit card debt?

22 A. Yes.

23 Q. How much?

24 A. All credit cards probably about 12,000 give

25 or take.

Page 201

1 Q. Any other debts?

2 A. No, sir. Just credit cards. No loans.

3 That's it.

4 Q. Any other assets?

5 A. No, sir.

6 Q. Is there anything you testified about today

7 that you need to correct?

8 A. No, sir, not that I can recall.

9 Q. Is there anything you need to clarify?

10 A. Not at this time, no, sir.

11 Q. I'm just going to check my notes real

12 quick.

13 MR. HILKE: I am going to pass the witness

14 at this time.

15 MR. DENTON: I have some questions and so

16 if everybody's good, I will go forward.

17 MR. HILKE: Good with me.

18 EXAMINATION

19 BY MR. DENTON:

20 Q. Detective, I'm Lowell Denton. I'm

21 representing the City of El Paso. We've not met

22 before, right?

23 A. That's correct, yes, sir.

24 Q. Remind me from your earlier testimony, when

25 did you promote to the detective rank?

<p style="text-align: right;">Page 202</p> <p>1 A. I'm going to guess. I want to say 2011.</p> <p>2 Q. Very good. Very good. I will -- in my</p> <p>3 questions I will frequently refer to "the jury" in this</p> <p>4 case because, of course, that's the purpose of taking</p> <p>5 this testimony. I'm sure you understand that, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. So would you explain to the jury a little</p> <p>8 bit about the process of promoting to a detective in El</p> <p>9 Paso in 2011?</p> <p>10 A. Yes, sir. It's a test. There's a bunch of</p> <p>11 us who put out a test for detectives every so often, so</p> <p>12 many years. And you take a test, if you score good</p> <p>13 enough, they put you on the list and the person with</p> <p>14 the best score actually higher then eventually you --</p> <p>15 hopefully, you scored high enough where you get to get</p> <p>16 promoted and that's --</p> <p>17 Q. Very good and you did, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And when that test, the notice goes out for</p> <p>20 the test, is there a list of study materials?</p> <p>21 A. Correct. Yes, sir.</p> <p>22 Q. So tell the jury a little bit about that.</p> <p>23 What were the kinds of things that you studied in order</p> <p>24 to take the detective's examination?</p> <p>25 A. When they put out the detective's test,</p>	<p style="text-align: right;">Page 204</p> <p>1 A. Nothing really. I mean, just on patrol all</p> <p>2 you pretty much do is go from call to call. You do</p> <p>3 maybe a little of investigations here and there but a</p> <p>4 lot of it is followed up by detectives.</p> <p>5 Q. Before you came in the department, were you</p> <p>6 a peace officer or did you get your peace officer's</p> <p>7 license from the El Paso Academy?</p> <p>8 A. Through the El Paso Academy.</p> <p>9 Q. Okay. And how long was the academy course</p> <p>10 of study?</p> <p>11 A. During my time, it was a six-month academy.</p> <p>12 Q. During the academy study, did they teach</p> <p>13 you about department policies and so forth as well?</p> <p>14 A. I don't recall but I'm pretty sure they</p> <p>15 did, yes.</p> <p>16 Q. Okay. Did they teach but the legal rights</p> <p>17 of citizens and suspects?</p> <p>18 A. Yes, they did.</p> <p>19 Q. After you came out of the academy and took</p> <p>20 your oath of office, did you have a field training</p> <p>21 officer?</p> <p>22 A. Yes, I did.</p> <p>23 Q. Tell the jury what a field training officer</p> <p>24 is.</p> <p>25 A. Field training officer is when you graduate</p>
<p style="text-align: right;">Page 203</p> <p>1 they put a little bibliography of the materials that</p> <p>2 you should be focused on studying besides policies and</p> <p>3 procedures with the El Paso Police Department,</p> <p>4 investigative policies, penal code, know your penal</p> <p>5 code, search warrants, and then they also give you</p> <p>6 additional reading material, interrogations,</p> <p>7 investigations, extra stuff you should read on the</p> <p>8 side.</p> <p>9 Q. All right. Part of that was actually the</p> <p>10 department policies that applied to this new role you</p> <p>11 were looking for as a detective, correct?</p> <p>12 A. Correct. Yes, sir.</p> <p>13 Q. You had to read all that material and know</p> <p>14 it well enough to succeed on the exam?</p> <p>15 A. Correct.</p> <p>16 Q. How did you decide to compete for the</p> <p>17 detective job?</p> <p>18 A. It was time. About nine years on patrol, I</p> <p>19 just thought it was time to promote.</p> <p>20 Q. Did you have any influencers or mentors</p> <p>21 that encouraged you to do it?</p> <p>22 A. No, my spouse.</p> <p>23 Q. Very good. Before the detective exam and</p> <p>24 before you studied all that material, what had you been</p> <p>25 taught about investigations?</p>	<p style="text-align: right;">Page 205</p> <p>1 from the academy, you go to patrol division and you are</p> <p>2 assigned an FTO, field training officer who rides with</p> <p>3 you and pretty much guides you, shows the ropes, what</p> <p>4 needs to be done, how to do report writing, policies,</p> <p>5 and you're with that person for a whole twelve months</p> <p>6 not the particular FTO. You will have numerous FTO's</p> <p>7 your first year.</p> <p>8 Q. Very good, that was my next question. How</p> <p>9 many different individuals? Can you name them for me?</p> <p>10 A. Yes, sir. The first one was Dalia Romero.</p> <p>11 I rode with her three months. The second one was a</p> <p>12 Ulysses Sanchez and then oh, gosh, I can't remember.</p> <p>13 He's no longer with the department. I can't remember</p> <p>14 real nice guy. I just drew a blank.</p> <p>15 Q. That's all right. That's all right. So</p> <p>16 during the years between coming in as a patrolman and</p> <p>17 taking the detective's test, how many hours of</p> <p>18 additional in service instruction do you think you</p> <p>19 received at the department?</p> <p>20 A. Hundreds hours.</p> <p>21 Q. Okay. At that point before you promoted to</p> <p>22 detective, what was your personal belief about an</p> <p>23 officer's duty to know and follow the law?</p> <p>24 A. It's very important. We had to do that.</p> <p>25 Q. Okay. And at that point, who had</p>

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1 influenced you in this police department the most about
2 that personal principle?

3 A. I don't think it's one particular person.
4 I think just the --

5 Q. Who would be the most important one?

6 A. I guess my brass, my supervisors.

7 Q. Okay.

8 A. My field training officer, they -- how
9 important it was.

10 Q. Was that a part of the El Paso Police
11 Department culture that you learned?

12 A. Yes, sir, mm-hmm.

13 Q. So I -- it may be from your earlier answer
14 that if I asked you who was the toughest teacher that
15 you really can't pick one?

16 A. Yeah. I've had some really good mentors
17 and FTOs and even to this day, I still learn something
18 new from people.

19 Q. All right. So you talked a little bit
20 already with plaintiff's counsel about the continuing
21 learning you had as a detective, you talked about the
22 homicide course. Where did you take that?

23 A. It was in Dallas, Texas.

24 Q. Okay. Was it -- where was it located?
25 Community college?

Page 207

1 A. No, sir. It was one of those -- it was at
2 a hotel. You were there for a whole week or yeah, it
3 was put on by a famous -- he wrote a bunch of homicide
4 books.

5 Q. All right. Very good. And do you still
6 have today any of the curriculum or other materials
7 that were part of that course?

8 A. I do. I have the actual book. He actually
9 signed it and I've kept it with me.

10 Q. Outstanding. You also mentioned another
11 course in interrogations. Where did that take place?

12 A. That took place here in El Paso.

13 Q. At the police academy or somewhere else?

14 A. I don't recall the location. It was
15 probably at one of the regional command conference
16 rooms.

17 Q. Okay. Do you remember who the teachers
18 were there?

19 A. I don't remember. Again, it was somebody
20 -- it was a famous school and they actually instead of
21 sending us all to the school, it was cheaper to bring
22 in the instructor to El Paso and get us all trained.

23 Q. And were there curriculum materials for
24 that course as well?

25 A. Yes, sir, there was.

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1 Q. Do you retain those materials?

2 A. Probably not those.

3 Q. Okay.

4 A. I haven't, anyway.

5 Q. In both of those -- in the instance of both
6 of those courses, have you continued to rely upon and
7 use those in your professional work?

8 A. Probably do, yes, sir.

9 Q. Any other seminars or courses that are
10 significant that the jury should know about?

11 A. Not right off the top of my head to be
12 honest with you but yeah, there's been a few.

13 Q. Have you pursued any further formal
14 education since you've been in the department, college
15 work or anything else?

16 A. No, sir, I haven't.

17 Q. So after you got into the department's
18 detective division, what was the name of the unit that
19 you were in? What bureau or division?

20 A. When I first promoted to detective, I was
21 with Central CID.

22 Q. And was there also a field training officer
23 in that framework?

24 A. No. I guess, there's no such thing as a
25 field training officer but more of a mentor, like,

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1 you've been online, you know what needs to be done but
2 if you have any questions this detective's here to
3 guide you.

4 Q. And who would that have been?

5 A. Detective John Armendariz.

6 Q. Very good. Once you are in that position,
7 the policies and procedures in the department change
8 from time to time?

9 A. Sure they do, mm-hmm.

10 Q. How do you find out about those changes?

11 A. Through emails the department puts out.

12 Q. And what are you provided with in those
13 emails?

14 A. The new policy, the updates.

15 Q. Okay. Do you have a personal book that you
16 keep of the policies and procedures for the department?

17 A. There is -- they put out emails for you to
18 read and then there's a section where you go online and
19 you actually check off after you've read it and you
20 understood -- you have to take a little test that you
21 understood it.

22 Q. All right. So when they'll send out a
23 refresher or a revision on the policies, it's made
24 available to you to begin with?

25 A. Yes.

<p style="text-align: right;">Page 210</p> <p>1 Q. And sometimes have you to read it and</p> <p>2 certify that you have read and completed it; would that</p> <p>3 be correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And is there ever any testing that's</p> <p>6 associated with that just to validate the fact that you</p> <p>7 understood?</p> <p>8 A. Yes.</p> <p>9 Q. How -- in the department culture there, how</p> <p>10 common is it for to you go back and refer to those</p> <p>11 policies or procedures? Is that something you do or do</p> <p>12 you just kind of get the hang of it on the job?</p> <p>13 A. The majority of it you get the hang of it</p> <p>14 but if you haven't applied whatever you're going to do</p> <p>15 for a while and you just can't remember, I could get</p> <p>16 online and do a search for it and find out what the</p> <p>17 actual policy is.</p> <p>18 Q. All right. Let me ask our reporter to put</p> <p>19 up the document that we've provided earlier and it's</p> <p>20 titled 0013079 through 0013113.</p> <p>21 ONLINE VIDEO TECH: All righty. One</p> <p>22 moment.</p> <p>23 MR. DENTON: Will you share that on the</p> <p>24 screen?</p> <p>25 ONLINE VIDEO TECH: Yes.</p>	<p style="text-align: right;">Page 212</p> <p>1 number 15403 in that document. 15403. Okay. Now, the</p> <p>2 title of this chapter is "Follow-up investigation</p> <p>3 responsibilities and case documentation." Is that</p> <p>4 something that you recognize?</p> <p>5 A. I've probably read it before. Yes, sir.</p> <p>6 Q. Okay. And do you know and/or could you</p> <p>7 explain to the jury what the words are I guess it's the</p> <p>8 acronym there CALEA. Do you know what CALEA is?</p> <p>9 A. I -- from what I understand earlier in my</p> <p>10 career, I know it's some type of a standards that all</p> <p>11 departments all want to follow and to be certified by</p> <p>12 CALEA or something to that extent.</p> <p>13 Q. Okay. All right. Nationwide departments?</p> <p>14 A. Mm-hmm.</p> <p>15 Q. Is that correct?</p> <p>16 A. Sounds familiar, yes, sir.</p> <p>17 Q. All right. Is this the kind of detail that</p> <p>18 you were taught and that was a part of your testing for</p> <p>19 the detective position in the department?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. Let's look through the investigator</p> <p>22 responsibilities that are here and review and "Analyze</p> <p>23 all previous reports." That's consistent with some of</p> <p>24 the questions you were asked earlier, correct?</p> <p>25 A. I'm sorry. What letter would that be, sir?</p>
<p style="text-align: right;">Page 211</p> <p>1 BY MR. DENTON:</p> <p>2 Q. So do you recognize this front page here?</p> <p>3 A. Yes, I do.</p> <p>4 Q. Let's look at the second page. One of</p> <p>5 these has a date on it and one of them doesn't.</p> <p>6 There's the second page where it talks about the</p> <p>7 revision date in April of 2014. Is this the -- is this</p> <p>8 the kind of manual that you studied when you took the</p> <p>9 detective's examination?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. How often in the unit would issues</p> <p>12 about these policies come up either discussions with</p> <p>13 supervisors or among your colleagues?</p> <p>14 A. I guess when there was a revision or an</p> <p>15 update or something like that, they would bring it up</p> <p>16 to us.</p> <p>17 Q. Okay. And were you familiar enough with</p> <p>18 these to know what you were expected to do?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. Let me shift over then to the next</p> <p>21 document that we identified for today and it's the</p> <p>22 criminal investigation manual. It's 0015388, I</p> <p>23 believe. Do you recognize that cover page as well?</p> <p>24 A. Yes, sir, I do.</p> <p>25 Q. Let me ask if we can go to the Bates page</p>	<p style="text-align: right;">Page 213</p> <p>1 Q. It's A, "Review and analyze all previous</p> <p>2 reports"?</p> <p>3 A. Okay. Yes, sir, uh-huh.</p> <p>4 Q. So when you -- when you undertake to those</p> <p>5 interview these witnesses, you look into the</p> <p>6 information that you need to have in order to conduct</p> <p>7 that interview, would that be correct?</p> <p>8 A. Yes, sir. Or third party told me about</p> <p>9 that information and interview?</p> <p>10 Q. All right. Somebody tells you or you look</p> <p>11 it up yourself?</p> <p>12 A. Correct. Yes, sir.</p> <p>13 Q. All right. And Number F where it says,</p> <p>14 "Seek additional information from all possible sources,</p> <p>15 informants and public record searches," correct?</p> <p>16 A. Correct. Yes, sir.</p> <p>17 Q. And when you were doing the investigation</p> <p>18 on a case yourself, did you follow each of these steps</p> <p>19 if they were applicable to that file?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Let me ask the reporter then to put up the</p> <p>22 next document. And this one just is titled Criminal</p> <p>23 Interrogation and Confessions. I'm curious about</p> <p>24 whether or not you recognize the cover of this book to</p> <p>25 begin with. Do you recognize that?</p>

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1 A. Maybe at one time it was presented to me
2 but no, I don't.

3 Q. Okay. I was just curious if this was a
4 textbook that was on the study materials list for your
5 detective examination?

6 A. Criminal Interrogation and Confessions. I
7 don't think a lot of the material was that deep.

8 Q. Okay.

9 A. But could have been, I don't know.

10 Q. All right. Let's look on the next page and
11 it is a portion of that book, Chapter 6 and it's about
12 "The read method of interrogation, nine steps to
13 effectiveness in criminal investigations." Do you
14 remember that?

15 A. It's doesn't look -- I probably read it at
16 one time in my career.

17 Q. No. That's fine. I understand it's been a
18 while. And do you remember whether or not there was
19 material either this or something like it that was in
20 the homicide investigation course you went to in
21 Dallas?

22 A. Probably, yes, sir.

23 Q. Okay. All right. Let me move on from that
24 screen share. Any other sources or materials that you
25 remember that have been a part of your learning as a

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1 detective on how you're going to do your
2 responsibilities?

3 A. Again, just ask seasoned detectives, you
4 know, not too sure I would ask somebody if I couldn't
5 find it in the book or in the policy.

6 Q. So in the CAP unit after you joined the
7 Crimes Against Persons unit, did your investigators
8 have weekly or other regular meetings?

9 A. We had daily meetings. Yes, sir.

10 Q. Okay. And who were the people involved in
11 those daily meetings?

12 A. The whole unit, sir, from lieutenants,
13 sergeants, down to all the detectives.

14 Q. All right. Tell the jury what would happen
15 in those daily meetings, the communications back and
16 forth?

17 A. Every morning we'd sit down and have a
18 meeting and obviously, discuss anything going on
19 department-wise and/or maybe somebody had a call out
20 the night before or over the weekend and then we'd kind
21 of want to hear what's going on. Hey, I had a call
22 out. Tell us what happened. Oh, it was a suicide,
23 this and that. I'm still working the case. Just stuff
24 like that.

25 Q. Okay. In those weekly meetings or in those

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1 daily meetings that you said, were there participants
2 from outside the police department?

3 A. Not those, not those particular meetings.

4 Q. All right. Were there assistant district
5 attorneys that attended meetings in the Crimes Against
6 Persons unit?

7 A. Yes, sir, they did.

8 Q. How often did that happen?

9 A. During a major investigation, they, again,
10 after we're working it and it would be the detectives
11 that are working it, we'd have crime scene the ones
12 that are working it. If it was a gang related, we'd
13 have gangs in there and then we'd have the DA, so
14 everybody had their own little input on what was going
15 on.

16 Q. Okay. Were the prosecutors giving you
17 feedback about how to carry out your activities in
18 accordance with the law?

19 A. Yeah. They would give their input. We --
20 it's not -- they're not there to tell us what to do.
21 We're just telling them, this is what we've got, this
22 is what we're doing. They'd be sitting there, okay,
23 that's good or hey, you know what, why don't you guys
24 go do this, why don't you do that yeah.

25 Q. Would they give you feedback on what was

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1 necessary to get a warrant or some other kind of
2 judicial proceeding?

3 A. Yes, sir. Correct. Uh-huh.

4 Q. And what was the point of that feedback and
5 information?

6 A. I don't exactly remember the details but it
7 would have been something like, hey, do you think I
8 have enough to go get a search warrant on this cell
9 phone or on this property. No, I don't think you have
10 enough on that one. Why don't you do this and then
11 come back and give me a holler see if we have enough.

12 Q. So were you working with them to achieve
13 complaints to the legal standards?

14 A. Yes, sir.

15 Q. In those meetings that you would attend,
16 did your colleagues talk about scenarios or what I
17 would call war stories or something that there were
18 lessons learned?

19 A. Sure, they would. They would talk about
20 maybe old cases that they worked that, you know, kind
21 of similar hey, you know, what I had something years
22 ago this is what happened, something to that extent.

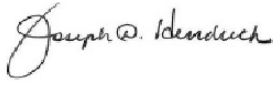
23 Q. Did you ever hear people share information
24 about how to make sure that the process was carried out
25 so that evidence was not excluded by the court?

<p style="text-align: right;">Page 218</p> <p>1 A. I don't think I understand the question.</p> <p>2 Q. Well, you know, what a motion to suppress</p> <p>3 is?</p> <p>4 A. Yes, sir, I do.</p> <p>5 Q. Tell the jury what a motion to suppress is?</p> <p>6 A. The defense is trying to keep certain</p> <p>7 evidence out of -- out of the -- to be presented to the</p> <p>8 jury or to the court.</p> <p>9 Q. Okay. And have you testified in District</p> <p>10 Court on motions to express in the past?</p> <p>11 A. Yes, sir, I have.</p> <p>12 Q. Prior to your work on this file, had you</p> <p>13 ever had courts exclude any evidence that you had</p> <p>14 developed?</p> <p>15 A. I've been to some suppression hearings but</p> <p>16 from what I recall, none of my evidence was ever</p> <p>17 withheld or not able to be presented.</p> <p>18 Q. Okay. And the tell jury whether or not</p> <p>19 your team was focused on carrying out the process</p> <p>20 correctly so your evidence could be used.</p> <p>21 A. Yeah. That's a standard. That's the</p> <p>22 minimum we needed to do. We needed to do everything</p> <p>23 also to make sure everything is presented.</p> <p>24 Q. Did you ever work with any outside agencies</p> <p>25 other than the El Paso Police Department in your</p>	<p style="text-align: right;">Page 220</p> <p>1 complaint in this case; is that correct?</p> <p>2 A. I don't know. What exactly is that again,</p> <p>3 sir?</p> <p>4 Q. The federal court pleading called the third</p> <p>5 amended complaint that alleges what everybody did,</p> <p>6 including yourself.</p> <p>7 A. I don't think I have, to be honest. Maybe</p> <p>8 it was. It's been a few years but I don't recall ever</p> <p>9 getting it to be honest.</p> <p>10 Q. All right. Are you aware that they are</p> <p>11 alleging that Daniel Villegas was coerced to give a</p> <p>12 confession that was illegal?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And that they claim that he was</p> <p>15 psychologically or mentally or verbally coerced?</p> <p>16 A. I do remember hearing that part. Yes, sir.</p> <p>17 Q. All right. And are you aware that they</p> <p>18 alleged that he was physically threatened with abuse?</p> <p>19 A. Yes, sir, I do recall that.</p> <p>20 Q. All right. When you were in the Crimes</p> <p>21 Against Persons unit, did you know whether or not that</p> <p>22 kind of conduct was illegal under the law?</p> <p>23 A. Oh, yes, sir.</p> <p>24 Q. If you had known of any conduct of that</p> <p>25 type would you have reported it?</p>
<p style="text-align: right;">Page 219</p> <p>1 investigations?</p> <p>2 A. Yes, sir, I did.</p> <p>3 Q. What agencies would that be?</p> <p>4 A. Texas Rangers, other agencies, maybe they</p> <p>5 had a suspect here in town, we were they'd tell me,</p> <p>6 Hector, we have detectives coming in. I need you to be</p> <p>7 -- whatever they need, you help them out. Maybe go</p> <p>8 help them look for suspects, witnesses, or maybe their</p> <p>9 guy was already in jail and I'd go help them set up an</p> <p>10 interview for them, stuff like that.</p> <p>11 Q. All right. What about the El Paso</p> <p>12 Sheriff's Office?</p> <p>13 A. Gosh. You know what, I can't recall if I</p> <p>14 everyone worked with them to be honest with you, sir.</p> <p>15 Probably did but I don't recall.</p> <p>16 Q. All right. In your work with other</p> <p>17 agencies, how did the investigative practices in the</p> <p>18 Crimes Against Persons unit compare with the Texas</p> <p>19 Rangers, for instance?</p> <p>20 A. Kind of about the same, sir. We just had</p> <p>21 more resources available to us than they did but yeah,</p> <p>22 we worked hand-in-hand together, very thorough</p> <p>23 investigators.</p> <p>24 Q. So I think you said earlier on, that you</p> <p>25 had not fully read the plaintiff's third amended</p>	<p style="text-align: right;">Page 221</p> <p>1 A. Any type of people getting beat up for</p> <p>2 confessions or civil rights violations, yes, sir I</p> <p>3 would, mm-hmm.</p> <p>4 Q. Okay. Because you had been asked questions</p> <p>5 earlier about whether or not somebody would take an</p> <p>6 officer aside and say, don't do this anymore or I'll</p> <p>7 have to write you up, correct?</p> <p>8 A. Yes, sir. I do, mm-hmm.</p> <p>9 Q. But the kinds of allegations that</p> <p>10 Mr. Villegas is making are far more serious than that,</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And I think you actually said in that</p> <p>14 earlier answer that if it was a civil rights complaint</p> <p>15 or something like that, you'd have a duty to report it?</p> <p>16 A. Correct. Yes, sir.</p> <p>17 Q. Do you have any reason to believe that</p> <p>18 Chief Allen during the time you were in Crimes Against</p> <p>19 Persons was aware of any of that kind of conduct</p> <p>20 actually going on?</p> <p>21 A. No, sir.</p> <p>22 Q. Have you heard from anybody that the chief</p> <p>23 knew about any of that kind of behavior and just let it</p> <p>24 go?</p> <p>25 A. No, sir.</p>

<p style="text-align: right;">Page 222</p> <p>1 Q. We looked earlier at an incident where</p> <p>2 there was an Internal Affairs investigation and you</p> <p>3 were called in to give a statement. Do you recall that?</p> <p>4 A. The one that was shown earlier? Yes, sir,</p> <p>5 I do.</p> <p>6 MR. DENTON: Yes. Mr. Hilke, can you put</p> <p>7 that IAO4169 on the screen and share it for us?</p> <p>8 MR. HILKE: Yes, sir.</p> <p>9 MR. DENTON: Thank you, Counsel. I believe</p> <p>10 this is Exhibit 10; is that correct?</p> <p>11 MR. HILKE: This is Exhibit 10.</p> <p>12 MR. DENTON: I'm sorry?</p> <p>13 MR. HILKE: Yes, this is Exhibit 10.</p> <p>14 MR. DENTON: Thank you. And could you go</p> <p>15 to PDF Page 23?</p> <p>16 MR. HILKE: Yes.</p> <p>17 BY MR. DENTON:</p> <p>18 Q. So I believe that this is the portion of</p> <p>19 the statement that you looked at from your colleague at</p> <p>20 the time, is it Alex Guerra?</p> <p>21 A. That's correct. Yes, sir.</p> <p>22 Q. Look on Number 1 where the question is</p> <p>23 asked and read that first sentence in response there?</p> <p>24 A. "Did you instruct the complaint's daughter</p> <p>25 Jo Ann to return to her residence? No. The victim had</p>	<p style="text-align: right;">Page 224</p> <p>1 A. Yes. Correct.</p> <p>2 Q. But he admits that he did, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. All right. Let's move to the next</p> <p>5 page on Page 24. Move down a little farther. I went</p> <p>6 too far. Let's go back up, I'm sorry. Further back up</p> <p>7 in that statement. I think it's actually at the top.</p> <p>8 Here we go it's Number 4. Were you involved in going</p> <p>9 back to -- what is CRCC?</p> <p>10 A. Central Regional Command Center.</p> <p>11 Q. All right. Were you involved in going back</p> <p>12 and working that paperwork up?</p> <p>13 A. I guess so if that's what it says I did,</p> <p>14 yes, sir.</p> <p>15 Q. All right. Now let's go to Page 27. Let's</p> <p>16 look a little bit further down on that page and this is</p> <p>17 your statement. That's where you are -- you say you</p> <p>18 did not instruct her to do those things in Number 1</p> <p>19 there at the bottom, correct?</p> <p>20 A. Return to her residence nor --</p> <p>21 Q. All right. I'm sorry. I didn't mean to</p> <p>22 interrupt you. Go ahead.</p> <p>23 A. I was reading out loud. The "No. Did I</p> <p>24 hear my partner instruct" -- okay. Yes. Mm-hmm.</p> <p>25 Q. Okay. Look just above that and read the</p>
<p style="text-align: right;">Page 223</p> <p>1 been staying with her husband for three days before she</p> <p>2 was convinced to report the assault. I asked her where</p> <p>3 she was staying since the assault and she stated at her</p> <p>4 house at 6106 Tampa."</p> <p>5 Q. Okay. That's good.</p> <p>6 A. Okay.</p> <p>7 Q. That's good. And so do you or do you not</p> <p>8 recall that this individual had actually been living</p> <p>9 there with her husband at the same location for three</p> <p>10 days after it happened?</p> <p>11 A. Gosh, sir, it's been a while. I mean, if</p> <p>12 it's there, it happened but I don't recall.</p> <p>13 Q. Okay. All right. And then on the question</p> <p>14 Number 2 down there where he's asked, "Did you instruct</p> <p>15 her to pretend like nothing happened." You said you</p> <p>16 didn't say that, correct?</p> <p>17 A. Did I not -- according to what's written</p> <p>18 here, yes.</p> <p>19 Q. Well, no. This is his statement. You</p> <p>20 understand that?</p> <p>21 A. Okay. I see where you're going. Okay.</p> <p>22 This is Alex Guerra's statement.</p> <p>23 Q. And Mr. Hilke had asked you earlier whether</p> <p>24 or not from your question and answer whether or not you</p> <p>25 said that and you didn't say that to her, correct?</p>	<p style="text-align: right;">Page 225</p> <p>1 sentence, read the paragraph there that says, "Both me</p> <p>2 and Officer Guerra"?</p> <p>3 A. "Both me and Officer Guerra returned to</p> <p>4 Central and completed all necessary paperwork. While</p> <p>5 at the station, put a 'shots fired' call. Officers</p> <p>6 made it out to the call at Paisano. The call at</p> <p>7 Paisano turned out to be a homicide, both me and my</p> <p>8 partner were out on Paisano until 4:50."</p> <p>9 Q. So did that intervening call prevent you</p> <p>10 from going back to her location to try to serve the</p> <p>11 warrant on her husband?</p> <p>12 A. Sounds like it did. Yes, sir.</p> <p>13 Q. All right. All right.</p> <p>14 MR. DENTON: You can stop the screen share</p> <p>15 on that. Thank you, Counsel.</p> <p>16 BY MR. DENTON:</p> <p>17 Q. In these meetings that you would have in</p> <p>18 the unit either the daily meetings or the meetings that</p> <p>19 you would have with the assistant district attorneys,</p> <p>20 did you ever review or talk about rulings that the</p> <p>21 courts had made in other investigations coming out of</p> <p>22 the Crimes Against Persons unit?</p> <p>23 A. No, not with -- not formally where they</p> <p>24 come over and, like, hey, we need to go down there and</p> <p>25 talk to you guys, what's going on. I know there was a</p>

<p style="text-align: right;">Page 226</p> <p>1 handful of when we'd have what we'd call it's our shift</p> <p>2 training day that we'd get updates and stuff like that</p> <p>3 away from the office. We'd go shooting. We'd have</p> <p>4 maybe a one hour, two hours where the DAs would come</p> <p>5 over and give us some type of a training, whether it's</p> <p>6 search warrants, interviews, stuff like that, yes.</p> <p>7 Q. So they would tell you about new developments</p> <p>8 and how to evolve with the times to get it right?</p> <p>9 A. That's correct. Yes, sir, or just new</p> <p>10 stuff that was coming through the -- starting in</p> <p>11 September the new changes and penal code and yeah,</p> <p>12 stuff like that. They would -- all the new updates.</p> <p>13 Q. Tell the jury the names of the supervisors</p> <p>14 that you had while you were in the Crime Against</p> <p>15 Persons unit. You already mentioned a Sergeant Kozak;</p> <p>16 is that correct?</p> <p>17 A. That's correct. Yes, sir. It would be</p> <p>18 Sergeant Al Cardenas, Rick Vera and Lieutenant Reggie</p> <p>19 Molton.</p> <p>20 Q. Very good. When you were called to</p> <p>21 Internal Affairs on that matter that we looked at or</p> <p>22 any others, did you take it seriously?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Did you believe that the investigators were</p> <p>25 taking it seriously?</p>	<p style="text-align: right;">Page 228</p> <p>1 BY MR. HILKE:</p> <p>2 Q. Detective, I have just a couple of</p> <p>3 follow-up questions for you. I am going to show you</p> <p>4 again Exhibit 10. Do you see this document on your</p> <p>5 screen, Detective Loya?</p> <p>6 A. Yes, sir, I do.</p> <p>7 Q. And this is Page 27 on -- it's you being</p> <p>8 questioned about the Internal Affairs matter with</p> <p>9 Mrs. Montelongo; is that right?</p> <p>10 A. Yes, sir.</p> <p>11 Q. This is a typed -- your answers are typed</p> <p>12 here, correct?</p> <p>13 A. Yes, sir, they are.</p> <p>14 Q. Who typed these answers?</p> <p>15 A. It depends, sir. I've been to Internal</p> <p>16 Affairs where we go over the questions and then they</p> <p>17 tell me, okay, sit here and type out your statement or</p> <p>18 I've had investigators where they're actually typing it</p> <p>19 out for me.</p> <p>20 Q. Okay. So you don't remember here if you</p> <p>21 typed it or if the investigators did?</p> <p>22 A. I don't recall, sir.</p> <p>23 Q. Okay.</p> <p>24 MR. HILKE: I am going to stop sharing that</p> <p>25 now.</p>
<p style="text-align: right;">Page 227</p> <p>1 A. Yes, sir, I did.</p> <p>2 Q. Was it your experience that they looked at</p> <p>3 the weeds, down in the weeds, and the details to find</p> <p>4 out whether or not you or your colleagues were</p> <p>5 following the rules?</p> <p>6 A. Yes, sir, I did.</p> <p>7 MR. DENTON: Thank you, Detective. I'll</p> <p>8 pass the witness.</p> <p>9 MR. HILKE: I do have a few questions. Do</p> <p>10 other counsel have follow-up questions?</p> <p>11 MR. MARTINEZ: I don't.</p> <p>12 THE WITNESS: Can I take a five-minute</p> <p>13 break to make a quick phone call? Would it be okay?</p> <p>14 MR. HILKE: That's good with me.</p> <p>15 THE WITNESS: I just need to make some</p> <p>16 child care arrangements real quick.</p> <p>17 ONLINE VIDEO TECH: We are off the record.</p> <p>18 The time is 3:55.</p> <p>19 (Break from 3:55 p.m. until 3:58 p.m.)</p> <p>20 ONLINE VIDEO TECH: We are back on the back</p> <p>21 on the record for the deposition of Detective Hector</p> <p>22 Loya being conducted by videoconference. My name is</p> <p>23 Sydney Little. Today is May 9th, 2022, and the current</p> <p>24 time is 3:58 p.m.</p> <p>25 RE-EXAMINATION</p>	<p style="text-align: right;">Page 229</p> <p>1 And could I actually ask could we put up</p> <p>2 the Exhibit 2 that Lowell used for a moment, please?</p> <p>3 ONLINE VIDEO TECH: Yes, one moment.</p> <p>4 MR. HILKE: Thank you. Okay, great. And</p> <p>5 you can keep it there, please.</p> <p>6 BY MR. HILKE:</p> <p>7 Q. Now, Mr. -- Detective Loya, I'm now showing</p> <p>8 you what Lowell showed you as Exhibit 2. Are these the</p> <p>9 Follow-up Investigation Responsibilities and Case</p> <p>10 Documentation?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And this applies specifically for -- I'm</p> <p>13 sorry, for follow-up investigations; is that right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. And the work you did on the 2014</p> <p>16 murders, was that a follow-up investigation?</p> <p>17 A. Hmm, that's a tricky word. The way I</p> <p>18 defined it, no. Again, it was just, go get some</p> <p>19 statements and that was about it.</p> <p>20 Q. Got it. And this is a long list of</p> <p>21 responsibilities, isn't it?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And in theory, you could spend months and</p> <p>24 months on any case you worked on, couldn't you?</p> <p>25 A. I guess you could. Yes, sir.</p>

<p style="text-align: right;">Page 230</p> <p>1 Q. And did your supervisor tell you will that</p> <p>2 the person?</p> <p>3 THE REPORTER: Say that again.</p> <p>4 MR. HILKE: I'm sorry, sir.</p> <p>5 BY MR. HILKE:</p> <p>6 Q. Did your supervisors ever tell you you're</p> <p>7 not doing enough on the 2014 Electric Street -- I'm</p> <p>8 sorry, on your 2014 work into the Electric Street</p> <p>9 murders?</p> <p>10 A. No, sir, never.</p> <p>11 Q. So was it your understanding that your work</p> <p>12 was consistent with your responsibilities here?</p> <p>13 A. On that particular case?</p> <p>14 Q. Yes.</p> <p>15 A. No, sir.</p> <p>16 Q. It was not consistent with that case with</p> <p>17 responsibilities here?</p> <p>18 A. Everything that's on this list that I do in</p> <p>19 2014 on that case, no.</p> <p>20 Q. Okay. And was that a -- did you think</p> <p>21 there was anything wrong with the fact that you didn't</p> <p>22 do all these things on the -- on your investigation</p> <p>23 into the Electric Street murders?</p> <p>24 A. I didn't think it was -- there was nothing</p> <p>25 wrong with it, it just wasn't a normal investigation</p>	<p style="text-align: right;">Page 232</p> <p>1 A. Yes, sir.</p> <p>2 Q. What kind of mentoring did you -- what --</p> <p>3 what did he do as your mentor at CAP?</p> <p>4 A. At CAP? Kind of the same thing, kind of</p> <p>5 guided me because I mean, the type of cases I was</p> <p>6 working at CID are completely different than what I was</p> <p>7 doing at -- CAP, yeah, okay. This is -- what do I do</p> <p>8 here? Well, you've got to do this or that, and I think</p> <p>9 our first homicide case, I kind of shadowed him. Okay.</p> <p>10 This is what we're going to do. Now, we're going to</p> <p>11 talk to this person. This is what we usually do, come</p> <p>12 to these meetings and then we've got to do this, just</p> <p>13 mentoring me, walking me through.</p> <p>14 Q. And did you respect and admire him?</p> <p>15 A. Very much, yes, sir.</p> <p>16 Q. Do you trust his judgment?</p> <p>17 A. I do, sir.</p> <p>18 Q. And did you look up to him?</p> <p>19 A. Oh, yeah, I did. He's a lot younger than</p> <p>20 me but really smart and yeah, he knows his stuff.</p> <p>21 Q. Do you remember you testified about a memo</p> <p>22 that was circulated about scanning all notes; is that</p> <p>23 right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Were you asked to take a test on that memo?</p>
<p style="text-align: right;">Page 231</p> <p>1 that I get the case, I worked it. I follow who did it,</p> <p>2 I make an arrest, get a confession. Yeah. It was just</p> <p>3 not -- it wasn't a normal case and the years that I was</p> <p>4 there, this is the first and last time I ever did</p> <p>5 something like this.</p> <p>6 Q. And if you had taken more initiative, if</p> <p>7 you had said, I'm going to get to the bottom of these</p> <p>8 different leads and threads in this case, how do you</p> <p>9 think -- what response would you have gotten to that?</p> <p>10 A. I don't know, sir. I never got a chance to</p> <p>11 say to ask or request that.</p> <p>12 Q. Okay. But no one ever -- no one ever told</p> <p>13 you that you needed to do anything more than what you</p> <p>14 actually did on the case?</p> <p>15 A. No, sir, hmm-mm.</p> <p>16 Q. And were you worried about getting in</p> <p>17 trouble for that?</p> <p>18 A. Not really, no, sir. Just following orders.</p> <p>19 Q. I am going to stop sharing this now. Oh,</p> <p>20 I'm sorry. Thank you. So you mentioned that your</p> <p>21 first mentor at CAP was actually Detective Armendariz;</p> <p>22 is that right?</p> <p>23 A. Correct. Yes, sir.</p> <p>24 Q. He's the same one you worked with on the</p> <p>25 Electric Street murders?</p>	<p style="text-align: right;">Page 233</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you go online -- did you do any -- were</p> <p>3 you asked to do anything to confirm that you had</p> <p>4 understood that memo?</p> <p>5 A. Again, I don't recall. I think at the</p> <p>6 beginning, they were just emails and then eventually</p> <p>7 they turned into maybe the last year or two where we</p> <p>8 actually, we go onto a different website and you have</p> <p>9 to check it off and take a little quick quiz on it that</p> <p>10 you understood it and you acknowledge it.</p> <p>11 Q. And when you say the last -- when did you</p> <p>12 start having to go to a website to do that?</p> <p>13 A. Maybe the last couple of years, two or</p> <p>14 three years. I may be way off but that's what I'm</p> <p>15 thinking.</p> <p>16 MR. HILKE: I have no further questions.</p> <p>17 MR. DENTON: Nothing further.</p> <p>18 MR. BRITTAIN: Nothing from Eric Brittain.</p> <p>19 MR. MARTINEZ: Nothing here.</p> <p>20 MR. DARNELL: We will reserve our questions</p> <p>21 for trial.</p> <p>22 ONLINE VIDEO TECH: All right. Go ahead</p> <p>23 and get us off the record. The time is 4:06 p.m.</p> <p>24 -oOo-</p> <p>25</p>

<p style="text-align: right;">Page 234</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS: HECTOR J. LOYA</p> <p>3 DATE: May 9, 2022</p> <p>4 Page/Line Change Reason</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p style="text-align: right;">Page 236</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2 DEPOSITION OF HECTOR J. LOYA</p> <p>3 May 9, 2022</p> <p>4 I, Joseph D. Hendrick, Notary Public and</p> <p>5 Certified Shorthand Reporter in the State of Texas,</p> <p>6 hereby certify to the following:</p> <p>7 That the Witness, HECTOR J. LOYA, was duly</p> <p>8 sworn by the officer and that the transcript of the</p> <p>9 oral deposition is a true record of the testimony given</p> <p>10 by the witness;</p> <p>11 I further certify that, pursuant to FRCP</p> <p>12 Rule 30(f)(1), the signature of the deponent:</p> <p>13 X was requested by the deponent or</p> <p>14 a party before the completion of the deposition and is</p> <p>15 to be returned within 30 days from date of receipt of</p> <p>16 the transcript;</p> <p>17 _____ was not requested by the</p> <p>18 deponent or a party before the completion of the</p> <p>19 deposition;</p> <p>20 I further certify that the amount of time</p> <p>21 used by each party is as follows:</p> <p>22 Wally Hilke - 04:34:32</p> <p>23 Quinn K. Rallins - 00:00:00</p> <p>24 Lowell F. Denton - 00:33:00</p> <p>25 Jeep Darnell - 00:00:00</p>
<p style="text-align: right;">Page 235</p> <p>1 I, HECTOR J. LOYA, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4 _____</p> <p>5 HECTOR J. LOYA</p> <p>6</p> <p>7 STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9</p> <p>10 Before me _____ on this day</p> <p>11 personally appeared HECTOR J. LOYA, known to me (or</p> <p>12 proved to me on the oath of _____ or</p> <p>13 through _____ (description of identity card</p> <p>14 or other document)) to be the person whose name is</p> <p>15 subscribed to the foregoing instrument and acknowledged</p> <p>16 to me that he executed the same for the purposes and</p> <p>17 consideration therein expressed.</p> <p>18 Given under my hand and seal of office this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p>22 Notary Public in and for the</p> <p>23 State of _____</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 237</p> <p>1 Jim Darnell - 00:00:00</p> <p>2 Cris Estrada - 00:00:00</p> <p>3 Andrés E. Almanzán - 00:00:00</p> <p>4 Eric M. Brittain - 00:00:00</p> <p>5 James A. Martinez - 00:00:00</p> <p>6 I further certify that I am neither counsel</p> <p>7 for, related to, nor employed by any of the parties or</p> <p>8 attorneys in the action in which this proceeding was</p> <p>9 taken;</p> <p>10 Further, I am not a relative or employee of</p> <p>11 any attorney of record, nor am I financially or</p> <p>12 otherwise interested in the outcome of the action.</p> <p>13 Subscribed and sworn to on this date:</p> <p>14 May 23, 2022.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">  Joseph D. Hendrick Texas CSR #947 For Kentuckiana Court Reporters P.O. Box 3983 Louisville, KY 40201 Telephone: (502) 589-2273 Fax: (502) 584-0119 </p>

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